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APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1967

No. 726

ROBERT T. MATHIS, SR., PETITIONER

vs.

UNITED STATES OF AMERICA, RESPONDENT

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 26, 1967
CERTIORARI GRANTED OCTOBER 16, 1967

Supreme Court of the United States

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ROBERT T. MATHIS, SR., PETITIONER

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UNITED STATES OF AMERICA, RESPONDENT

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

No. 65-513-Criminal-EC

UNITED STATES OF AMERICA

vs.

ROBERT T. MATHIS, SR.

DOCKET ENTRIES

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[fol. A-2] INDICTMENT

(ALL FORMAL PARTS OMITTED)

The Grand Jury charges:

COUNT ONE

On or about the 31st day of March, 1961, in Winter Haven, Polk County, Florida, then in the Southern District of Florida,

ROBERT T. MATHIS, SR.

did knowingly and wilfully present to the District Director of Internal Revenue at Jacksonville, Florida, then in the Southern District of Florida, a false claim in the sum of $885.60 against the United States for an income tax refund for the year 1960, and he then knew the claim to be false, fictitious and fraudulent in that it was based upon a false and fictitious income tax return filed by said Robert T. Mathis, Sr.; in violation of Title 18, United States Code, Section 287.

COUNT TWO

On or about the 23rd day of January, 1962, in Winter Haven, Polk County, Florida, then in the Southern District of Florida,

ROBERT T. MATHIS, SR.

did knowingly and wilfully present to the District Director of Internal Revenue at Jacksonville, Florida, then in the Southern District of Florida, a false claim in the sum of $931.20 against the United States for an income [fol. A-3] tax refund for the year 1961, and he then knew the claim to be false, fictitious and fraudulent in that it was based upon a false and fictitious income tax return

filed by said Robert T. Mathis, Sr.; in violation of Title 18, United States Code, Section 287.

A TRUE BILL

.....

Foreman

WILLIAM A. MEADOWS, JR.
United States Attorney

By: JAMES W. MATTHEWS
Assistant U.S. Attorney

[fol. A-4] VERDICT

(ALL FORMAL PARTS OMITTED)

June 23, 1966
(Date)

Miami, Florida
(Place)

We, the Jury, find the Defendant, ROBERT T. MATHIS, SR.,

guilty as to Count 1;
guilty as to Count 2,

as charged in the Indictment.

SO SAY WE ALL.

EDWARD D. REID
Foreman

[fol. A-5]

JUDGMENT AND COMMITMENT

(ALL FORMAL PARTS OMITTED)

On this 23rd day of June, 1966, came the attorney for the government and the defendant appeared in person and by counsel, Max Lurie, Esq.

IT IS ADJUDGED that the defendant has been convicted upon his plea of NOT GUILTY AND A JURY VERDICT OF GUILTY of the offense of false claims for refund to the Internal Revenue Bureau; in violation of Title 18, United States Code, Section 287, as charged in Counts One and Two of the Indictment and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted, and the court having considered time already spent in confinement prior to final judgment or commitment,

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of THIRTY (30) MONTHS as to each of Counts One and Two, said periods of confinement to run concurrently with each other, or until otherwise discharged by due process of law.

[fol. A-6] IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

EMETT C. CHOATE
EMETT C. CHOATE, Senior
United States District Judge

The Court recommends commitment to:

.....

Clerk

[fol. A-7] NOTICE OF APPEAL

(ALL FORMAL PARTS OMITTED)

ROBERT T. MATHIS, SR.
Box 221
East Unit, Florida State Prison
Raiford, Florida

OFFENSE—Violation of Section 287, Title 18, United States Code.

JUDGMENT—30 months on each count one and two in the custody of the United States Marshal, to run concurrently.

I, the above-named appellant, hereby appeal to the United States Court of Appeals for the Fifth Circuit from the above-stated judgment.

DATED THIS 23 day of June, 1966.

ROBERT T. MATHIS, SR.
ROBERT T. MATHIS, SR.

LURIE & CAPUANO
1409 Biscayne Bldg.
Miami, Florida
Attorneys for Deft.

[fol. A-8]

(ALL FORMAL PARTS OMITTED)

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

(April 28, 1967)

Before PHILLIPS, *THORNBERRY and DYER, Circuit Judges.

THORNBERRY, Circuit Judge: Appellant was convicted on both counts of a two-count indictment charging him with having knowingly filed false claims for income tax refunds in 1960 and 1961 in violation of 18 U.S.C. § 287.

On October 30, 1964, an Internal Revenue agent interviewed appellant, who was at that time incarcerated in the Florida State Penitentiary, with the object of establishing the correctness of a 1960 tax return bearing appellant's signature. At that interview appellant identified the tax return and the signature thereon as his. He also signed a Form 872[1] extending the limitation period on his 1960 return, thereby giving the Government additional time to investigate the return and determine the proper tax liability.[2]

[fol. A-9] Again, on March 2, 1965, a second interview was conducted with appellant at which time he identified a 1961 tax return bearing his signature and signed another Form 872 extending the limitation period. On March 10, 1965, the interviewing agent, who was not a criminal investigator, referred appellant's case to the Internal Revenue Intelligence Division as involving definite indications of fraud. On June 9, 1965, an agent of the Intelligence Division, accompanied by the original inter-

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* Of the Tenth Circuit, sitting by designation.

[1] Formally designated "Consent Fixing Period of Limitation Upon Assessment of Income and Profits Tax."

[2] Prior to executing the form, appellant was advised that he was under no obligation to sign it.

viewing agent, sought to interview appellant in conjunction with the then pending criminal investigation. At the beginning of that interview, appellant was advised of his constitutional rights whereupon he refused to cooperate further. Over appellant's objections at the trial, the Government was permitted to introduce the documents executed by appellant during the two initial interviews together with testimony that appellant had on those two occasions admitted having filed the 1960 and 1961 tax returns bearing his signature.

On this appeal, appallent relies solely upon Miranda v. Arizona, 1966, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694, in urging that the trial court erred in admitting into evidence the testimony and documents obtained at the two interviews because he was not on either occasion warned that he had a right to remain silent, that any [fol. A-10] statement he made might be used in evidence against him, and that he had a right to the presence of counsel. In seeking to bring his case within the purview of Miranda appellant would attribute great weight to two facts: (1) that throughout the investigation there was a possibility that subsequent criminal charges might be brought; and (2) that he was incarcerated at the time the two interviews were conducted. Convinced that neither of these circumstances bring appellant's case within the ambit of Miranda, we affirm.

The evidence clearly reflects that until March 10, 1965, when appellant's case was initially referred to agents of the Intelligence Division, the inquiry involving appellant's tax returns represented no more than a routine civil tax investigation. Indeed, it was not until November 23, 1965, over eight months later, that an indictment was returned charging appellant with the filing of a fraudulent claim. No arrest warrant was executed until April 21, 1966. At both of the interviews in question, appellant was fully informed of the Government's concern with the accuracy of his tax returns and he voluntarily cooperated with the investigating agent, there being no misrepresentation, fraud, deceit, or misconduct employed to gain such coop- [fol. A-11] eration. It cannot be disputed that incident to every routine tax audit there exists a possibility that

evidence of fraud may be uncovered, perhaps resulting in a referral of the case to the Intelligence Division. It is also possible to view the taxpayer as the sole "suspect" in a tax investigation from its very beginning, thus clouding the distinction between the "investigative" and "accusatorial" stages of inquiry. We are convinced, however, that the presence of neither of these factors is sufficient to render a routing civil tax investigation equivalent to an inquiry into an unsolved crime. See Kohatsu v. United States, 9th Cir. 1965, 351 F.2d 898, cert. denied, 1966, 384 U.S. 1011, 86 S.Ct. 1915; United States v. Fiore, W.D.Pa. 1966, 258 F. Supp. 435; Bohrod v. United States, W.D. Wis. 1965, 248 F. Supp. 559.

Neither does the mere circumstance that appellant was incarcerated under a sentence for an unconnected offense at the time of the audit interviews in any way necessitate application of the Miranda safeguards. In expressly limiting application of its decision to cases involving "custodial interrogation", the Court in Miranda stated:

> By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.[4]

[fol. A-12] 384 U.S. at 444, 86 S.Ct. at 1612, 16 L.Ed.2d at ____. Such language obviously contemplates the incommunicado interrogation of individuals in a police-dominated atmosphere—interrogation incident to the investigation of an unsolved crime. On the dates of the interviews in the case before us, no criminal investigation had even been formally instituted. Clearly, the fact that such interviews were conducted while appellant was serving a state sentence cannot be properly viewed as subjecting him to the overbearing psychological pressures incident to the "custodial interrogation" contemplated in Miranda.

The judgment of the district court is accordingly

AFFIRMED.

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[4] This is what we meant in Escobedo when we spoke of an investigation which had focused on an accused.

[fol. A-13]

(ALL FORMAL PARTS OMITTED)

APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

Before PHILLIPS, *THORNBERRY and DYER, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

April 28, 1967

Issued as Mandate:

[fol. A-14]

(ALL FORMAL PARTS OMITTED)

APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

(May 25, 1967)

ON PETITION FOR REHEARING

Before PHILLIPS, *THORNBERRY and DYER, Circuit Judges.

PER CURIAM:

It is ORDERED that the petition for rehearing filed in the above styled and numbered cause be, and the same is, hereby DENIED.

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* Of the Tenth Circuit, Sitting by Designation.

[fol. A-15]

(ALL FORMAL PARTS OMITTED)

APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

ORDER:

Pursuant to the request of counsel for appellant, IT IS ORDERED that the original, certified, typewritten record on appeal in the above entitled and numbered cause, be transmitted to the Clerk of the Supreme Court of the United States for use in connection with Appellant's petition for writ of certiorari, said original record to be returned upon final disposition of the case by the Supreme Court.

EDWARD W. WADSWORTH, Clerk
United States Court of Appeals
for the Fifth Circuit

By /s/ RICHARD E. WINDHORST, JR.
Deputy Clerk
For the Court by Direction

(ORIGINAL FILED—JUNE 2, 1967)

[fol. A-16] CLERK'S CERTIFICATE

UNITED STATES OF AMERICA
UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

I, Edward W. Wadsworth, Clerk of the United States Court of Appeals for the Fifth Circuit, do hereby certify that the foregoing pages numbered from 212 to 225 contain a full, true and complete copy of the following papers: Argument and Submission; Order Denyine Appellant Bail Pending Appeal; Opinion of the Court; Judgment; Petition for Rehearing; Order Denying Rehearing; and Order Transmitting Original Record to the Supreme Court; in a certain cause in said Court numbered 23827 wherein Robert T. Mathis, Sr. is Appellant, and United States of America is Appellee; as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the original record numbered from 1 to 211 is the original record upon which said cause was heard and decided in the said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Court of Appeals at my office in the City of New Orleans, Louisiana, in the Fifth Circuit this 2nd day of June, A.D., 1967.

EDWARD W. WADSWORTH
Clerk of the United States Court
of Appeals for the Fifth Circuit

By .....
Deputy Clerk

[fol. A-17] IN THE DISTRICT COURT
OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF FLORIDA

No. 65-513-Cr-EC

UNITED STATES OF AMERICA, PLAINTIFF

vs.

ROBERT T. MATHIS, SR., DEFENDANT

Miami, Florida
June 22, 1966

The above entitled cause came regularly on for trial before the Honorable Emett C. Choate, Senior Judge, and a jury duly and regularly empanelled and sworn to try the same in open court on June 22, 1966,

APPEARANCES:

JAMES W. MATTHEWS, ESQ., Assistant United States Attorney, on behalf of the Plaintiff;

MAX LURIE, ESQ., on behalf of the Defendant.

[fol. A-18]

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[fol. A-19] THE COURT: United States of America versus Robert T. Mathis, Sr.

MR. MATTHEWS: The Government is ready, your Honor.

MR. LURIE: The defense is ready.

THE COURT: Call the jury.

(Thereupon, after voir dire examination, a jury and one alternate was selected and duly sworn.)

THE COURT: Do you desire to make an opening statement for the Government?

MR. MATTHEWS: A very brief one, your Honor.

THE COURT: Do you want to make an opening statement, or do you want to reserve—

MR. LURIE: I will reserve mine, Judge.

THE COURT: All right, reserve it to the opening of the defense.

MR. LURIE: Judge, may we invoke the rule prior to the taking of the testimony?

THE COURT: Yes.

All witness in the case of the United States versus Robert T. Mathis leave the courtroom and remain outside the [fol. A-20] hearing of the Court until called to the witness stand and dismissed. Remain in the hall, gentlemen.

MR. MATTHEWS: If the Court please, I would move that Mr. Fred Schilling—

THE COURT: An exception will be made of the agent in charge.

MR. LURIE: I just wanted to know who he was. I didn't know until now.

THE COURT: All right, now you know.

An opening statement, lady and gentlemen of the jury, is merely a statement, an index of the evidence they propose to bring before you in this case. It is not in itself evidence. It is merely made as an index so that you may more easily follow the particular presentation they propose.

For the Government, you may proceed.

MR. MATTHEWS: May it please the Court, Mr. Lurie, Miss Tidwell, gentlemen of the jury:

The judge has read to you the two counts of this indictment. I am not going to go over what they say again,

but I will incorporate it in my opening statement and say further to you that taxes have just been mentioned here incidentally.

This is really a suit against the defendant for filing a [fol. A-21] false claim. It could have been a false claim in any other respect, but the evidence will show that the false claim was made for an income tax refund to which the defendant was not entitled.

The years involved, 1960 and 1961.

The evidence will show that in the latter part of 1960, the defendant returned to Winter Haven, Florida. There he remained throughout the last three months of 1960, the entire year of 1961 and a part of 1962.

However, for the year 1960, it will show that he filed an income tax return claiming as a refund thereon some $800, alleging that he had been employed by a construction company in the northern part of the country, when in truth and in fact, the evidence will show he was not employed and when he was, in fact, drawing unemployment compensation from the State of Florida.

The evidence is going to further show that for the next year, 1961, again a refund return was filed, that is, a tax return was filed wherein a refund was claimed in the amount of some $900 showing that he had been employed by a construction company, again somewhere in the northern part of the country, earning approximately $9,000 in [fol. A-22] salary and claiming withholding of some $900 and claiming a refund for the amount of the $900 when in truth and in fact, I believe the evidence is going to show that during the year of 1961, he was located in Winter Haven, Florida; that he was participating in a business there; that he was seen in this business and on the street from time to time by local police officers; and in fact, during that period of time he also made a claim and received from Florida State Unemployment Compensation, unemployment benefits.

The evidence is going to further show with reference to the defendant's knowledge that the claim that he was making was false, that the subsequent year, 1962, a similar attempt was made whereby refundable tax statements were attempted to be filed, several in number, as a matter of fact.

The evidence is going to show that a comparison was made with reference to the signatures upon these returns with some other known documents that the defendant executed, and there are similarities.

The evidence is going to further show that shortly after the period of time which is in question—remember the year 1960, the year 1961. Of course, you know your 1960 return is usually filed before April of 1961 and a '61 [fol. A-23] return, of course, would be filed April of 1962. Though the years involve 1960 and 1961, the actual events themselves would naturally be the early months of the following year, and as I indicated, the following years, 1961 and 1962.

And for the year 1962 another effort was made by this defendant to again claim a refund, so this is a knowledgeable—

MR. LURIE: If the Court please, is he adding another charge here?

THE COURT: No, he is showing a course of conduct he said he is going to show.

MR. LURIE: I don't think subsequent course of conduct can be shown.

THE COURT: It can be shown—knowledge and intent.

MR. LURIE: Judge, this is a subsequent course of conduct.

THE COURT: Well, that can be shown to show intent, if it does show it. That is merely an effort on his part to show the man knew what he was doing, so to speak.

MR. MATTHEWS: As the Judge said to you, lady and gentlemen, what I say to you is not evidence. I am [fol. A-24] just telling you right now what evidence you can expect to hear from the witness stand, and I am in this brief time making some effort to coordinate it for you.

There will be numerous documents, of course, and at the close of our case I will have an opportunity to tell you how they should be viewed, so I am not going to go into that now.

My only admonition to you, as I stated initially, this is essentially a fraud case, not a tax case. It just so hap-

pens incidentally that this was submitted on a tax return.
Thank you very much.
THE COURT: All right, call your first witness.
MR. MATTHEWS: Walter McDaniel.

THEREUPON:

[R. 8-25] WALTER McDANIEL,

called as a witness by the plaintiff, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MATTHEWS:

Q State your full name, address and occupation.
A My name is Walter McDaniel. I am employed in [fol. A-25] the office of the District Director of Internal Revenue Service for the Jacksonville District.
I am the personal representative of the District Director. I have custody and control of all returns filed within the State of Florida.
Q Mr. McDaniel, did you, at my request, bring certain of those returns from your files?
A I did, sir.
Q May I have them, sir?
A I have taken photocopies of all these returns and papers that are attached (handing).
MR. MATTHEWS: If the Court please, I would request to have these marked for the purposee of identification.
THE COURT: All right, mark them, Mr. Clerk.
MR. MATTHEWS: And I would request to have the photo copies substituted at this time.
THE COURT: All right.
MR. LURIE: I want to see the originals first.
MR. MATTHEWS: I have them right here. Come right up.
[fol. A-26] THE COURT: The originals are being marked and put in evidence, and I suggest you look at them as we go along.
MR. LURIE: I have an objection right now, Judge. This green sheet in here I am going to object to very strenuously.

MR. MATTHEWS: Government's Exhibit No. 1-A, please.

THE COURT: I haven't seen it yet.

What is the so-called greet sheet?

MR. LURIE: Well, it is something I would like to talk about outside the presence of the jury.

THE COURT: Let me see it. I don't need to talk about it. I can look at it.

MR. MATTHEWS: Government's Exhibit 1-B.

THE COURT: What do we need the green sheet for? Merely an extension.

MR. MATTHEWS: It will become—

MR. LURIE: If it is used for any other purpose—

THE COURT: Well, it might be used for signature purposes for comparison.

MR. LURIE: Well, that is what I am objecting to, [fol. A-27] Judge.

THE COURT: I say it might.

MR. LURIE: Yes, if it is used for comparison purposes, under the law it is not admissible and I can show that it is not admissible under the law as it stands right now.

THE COURT: Well, I will not admit the greet sheet at the moment. I will admit them if the signatures on the others are denied. If there is any question of signatures, then bring in any you want for comparison.

MR. LURIE: They have got to prove the signature.

THE COURT: Well, that is one way to prove it.

MR. LURIE: It may not be the right way, Judge.

THE COURT: No, but you must get up to the minute. There are many ways to prove these things, if you know one genuine signature.

MR. LURIE: I am just trying to do what I have to do for my client.

THE COURT: I already sustained your objection [fol. A-28] temporarily.

MR. LURIE: All right.

THE COURT: I said I probably won't later on if you raise the question.

MR. LURIE: You might sustain my objection later on, too.

THE COURT: I might.

Mark the green ones, too, but we will reserve them for the time being.

(Thereupon, the documents referred to were marked Plaintiff's Exhibits 1-A, 1-B, 1-C; 2-A, 2-B, 2-C, 2-D, 2-E, 2-F for identification.)

BY MR. MATTHEWS:

Q Mr. McDaniel, I show you documents here which have been marked Government's Exhibits 1-A through 2-C, sir, and ask you to take a look at them and tell me whether or not these are documents which are under your supervision, custody, in the course of your official duties.

A They are.

Q And, sir, did you, pursuant to subpoena, remove these from the official files and bring them with you today [fol. A-29] at my request?

A I did, sir.

THE COURT: Are those the official files of the Jacksonville office of the Internal Revenue?

THE WITNESS: Yes, sir.

THE COURT: All right.

MR. MATTHEWS: Your Honor, at this time I would offer 1-A and 2-A, tax returns for the years 1960 and 1961.

THE COURT: Those are the tax returns for the years in question. That is, you say they are.

MR. LURIE: I have no objection to them, subject to the proviso that they are not being introduced as being his until they are proven to be his, the defendant's.

THE COURT: Well, I will—

MR. LURIE: They are returns of a Robert Mathis. They still have to prove—

THE COURT: I will receive them in evidence. That doesn't necessarily mean that this is the Robert Mathis, but this will be up to the jury when they get all through.

[fol. A-30] (The documents referred to were marked as Plaintiff's Exhibits 1-A and 2-A in evidence.)

BY MR. MATTHEWS:

Q Mr. McDaniel, I now show you Government's Exhibits 2-D through 2-F and ask you if you will examine those and tell me, sir, whether or not they are from the official files of the Internal Revenue Office in Jacksonville.

A They are, as I brought them with me.

MR. MATTHEWS: I am not offering these at this time.

MR. LURIE: You are not offering them at this time? All right. I will just look them over.

BY MR. MATTHEWS:

Q Now, Mr. McDaniel, I would ask you to take a look at what has been introduced as Government's Exhibit No. 1-A and the documents which have been marked 1-B, 1-C and 1-D for identification, and tell us whether there is any association between the two exhibits, please, sir.

A Yes. All four of these items are associated.

[fol. A-31] Q Can you tell us, sir, just generally, in what respect there is association between Government's Exhibits which you have—

A Yes, Government's Exhibit 1-A is a Form 1040 filed for the year 1960.

THE COURT: That is the tax return for that year; is that right?

THE WITNESS: That is correct, sir. Also attached to this file were three forms 872, and that form is entitled "Consent Filing Period of Limitation Upon Assessment of Income and Profits Tax." They all concern this 1960 1040A income tax return.

MR. MATTHEWS: Your Honor, at this time I am offering in evidence Exhibits 1-B, C and D.

MR. LURIE: I am going to object to B, C and D in one, if the Court please. I make the same proviso: I have no objection to this except that they still have to prove that it is his 1040 return, the defendant's 1040 return.

As far as these others, I think we ought to have a hearing outside the presence of the jury.

THE COURT: I don't think so.

MR. LURIE: If they are going to introduce—

[fol. A-32] THE COURT: I will admit them subject to a motion to strike later on if they are not connected up.

MR. LURIE: Well, Judge, these are the green forms that you said you would reserve.

THE COURT: I know what they are, and apparently there is some question about whether or not that original was his return.

MR. LURIE: Well, Judge, this is not a question of original return. This is a question of whether or not they obtained evidence illegally that they are going to use against this man, whether they forced him to incriminate himself.

Now, I want to—

THE COURT: I will pass on that on a motion to suppress, if you—

MR. LURIE: Well, I will move to suppress that now, and if you want to have a hearing on it, we have got to have it.

THE COURT: It is too late now. I will hear it during the course of the trial. You can do it later on, to suppress it. The evidence will probably come in.

[fol. A-33] (The documents referred to were marked as Plaintiff's Exhibits 1-B, C and D in evidence.)

BY MR. MATTHEWS:

Q Now, Mr. McDaniel, I show you what has been introduced in evidence—

THE COURT: Mind you, this is in the Jacksonville office. We are introducing official records which couldn't be suppressed under any circumstance.

MR. LURIE: Why?

THE COURT: Because they are official records.

MR. LURIE: Just because they got them in their official records doesn't make them official, if they have been obtained in such a manner in violation of the defendant's constitutional rights.

THE COURT: Why didn't you move before, then, if they were?

MR. LURIE: We didn't even know what they were going to introduce until now. We couldn't file a motion to suppress.

THE COURT: Well, I will hear the motion to sup-
[fol. A-34] press later on. But official records cannot be suppressed, as a rule. It may be official records were obtained by crooks.

MR. LURIE: If they were obtained in violation of this man's constitutional right—

THE COURT: I don't think so, because they don't generally do that. These are official records. They are filed up there by someone.

MR. LURIE: They can obtain them illegally, too, just like anybody else, Judge.

THE COURT: Well, I will hear you on that as the case goes on.

MR. LURIE: All right.

BY MR. MATTHEWS:

Q Mr. McDaniel, I show you Government's Exhibit 2-A in evidence and ask you—

THE COURT: All they do is show signatures, as I recall.

MR. LURIE: I know, Judge, but they are using those signatures to incriminate him, and I am going to show how they received them.

THE COURT: You will get to see, and we will see, and let the jury decide whether or not they took advan-
[fol. A-35] tage of this man. They will have to decide that.

MR. LURIE: All right.

BY MR. MATTHEWS:

Q Any relation to Government's Exhibits 2-B and 2-C for identification, sir?

A Government's Exhibit 2-A is a form 1040, an income tax rerurn for the year 1961. Government's Exhibit 2-B is a green form 872, entitled "Consent fixing period of limitation upon assessment of income and profits tax."

Also attached to this file was a two-page letter which I made photos of. They are—all three of these items are related to this 1961 income tax return.

MR. MATTHEWS: I would offer—

THE COURT: Have you seen the letter?

MR. MATTHEWS: —Government's Exhibits 2-B and 2-C at this time.

THE COURT: The letter and some other thing?

MR. LURIE: This 2-C—

THE COURT: That is the same thing, the green one, [fol. A-36] but the letter is a different situation.

MR. LURIE: I am objecting to 2-B, if the Court please, for the same objection I made before.

THE COURT: That will be overruled, subject to a motion to strike.

(The document referred to marked Plaintiff's Exhibit 2-B in evidence.)

MR. LURIE: I am objecting to 2-C until it is connected up with this defendant.

THE COURT: I will overrule it and you move to strike later on, if necessary.

(The document referred to was marked Plaintiff's Exhibit 2-C in evidence.)

MR. MATTHEWS: No further questions.

THE COURT: Cross examine.

CROSS EXAMINATION

BY MR. LURIE:

Q Mr. McDaniel, it seems to me I have cross examined you before, haven't I?

A Yes, sir.

THE COURT: You gentlemen have certainly met on [fol. A-37] occasions.

MR. LURIE: Yes.

BY MR. LURIE:

Q This form 872, was that taken under your direction or somebody else's?

A No, sir. The form 872, when I pulled the returns from the file, the forms 872 were attached to the returns, sir.

Q You don't know how they were obtained or who obtained them?

A I don't know personally, no, sir.

Q Now, they have an initial on them, "JRL." Is that Mr. Lawless from your department, do you know, James R. Lawless?

A I am sure it could be, sir.

Q There is one here that is marked with an initial, RRMc. Do you know who that is in your department?

A No, sir, I don't.

Q And these other two are marked JRL. That would be James R. Lawless?

A It could be. Now, it may be somebody else, but it could be.

[fol. A-38] Q Well, there are initials right alongside of the signature, "JRL."

A Yes, sir, but I don't know whose initials they are, sir.

Q Do you know when this investigation began?

A No, sir, I do not.

Q You have no knowledge of that at all?

A No, sir.

Q The only knowledge you have is that these documents are in the files at Jacksonville?

A That is correct, sir.

Q And that they are official files.

A Yes, sir.

Q And in your custody and control.

A Yes, sir.

MR. LURIE: No further questions.

THE COURT: What is 872, the green sheets?

THE WITNESS: When the statute is going to run on a return, sir, the taxpayer is usually contacted and advised that the statute is going to run, and they are asked to sign this form 872, and then can sign—

[fol. A-39] THE COURT: To extend the time to cover whatever is pending?

THE WITNESS: Yes, sir. Refunds, many times.

BY MR. LURIE:

Q Could it be, if there is a criminal investigation going on, could they ask for it while it is going on?

A I am sure they could, sir, but the taxpayer is advised of this.

Q You are sure of that? You didn't advise this man, did you?

A No, sir.

THE COURT: He had nothing to do with it.

THE WITNESS: I had nothing to do with it.

THE COURT: Merely the keeper of the records.

BY MR. LURIE:

Q But if there is a criminal investigation going on as to his income tax return and you send him a form 872, do you advise him of the fact that there is a criminal investigation pending before you ask him to sign it?

[fol. A-40] MR. MATTHEWS: Objection, your Honor. The witness has—

THE COURT: Sustained, because he said he doesn't know.

MR. MATTHEWS: It is outside the scope of my direct examination also, your Honor.

BY MR. LURIE:

Q Do you know whether they advised—

THE COURT: He said he didn't. I sustained the objection.

BY MR. LURIE:

Q Don't you send out a form letter?

MR. MATTHEWS: Objection again, your Honor.

THE COURT: Sustained.

BY MR. LURIE:

Q. Well, I wish to show you a copy of a letter that was sent to a Robert Theodore Mathis, Sr., an original letter signed by Laurie W. Tomlinson of the Jacksonville office. Is that his signature?

A Yes, sir.

Q Is that the form letter that is sent out with this form 872?

A This says here that this form letter was dated [fol. A-41] November 30, 1964, and it concerns a form 872 for the year 1960, which was forwarded from our Audit Division to Mr. Robert Theodore Mathis, Sr., Winter Haven, Florida.

Q Does it say anything in there about advising him that there was a criminal—

THE COURT: Wait a minute; wait a minute. The letter speaks for itself as to what it says.

MR. LURIE: I am going to have it marked as Exhibit No. 1.

THE COURT: Mark it, Mr. Clerk.

(The document referred to was marked Defendant's Exhibit No. 1 for identification.)

A JUROR: What was the date on that letter?

MR. LURIE: 1964.

THE COURT: 1964.

MR. LURIE: November 30, 1964.

No further questions of this man.

THE COURT: All right. That is all, I think.

MR. MATTHEWS: No further questions.

[fol. A-42]

[R. 26-50]

THEREUPON:

JOHN RAYMOND LAWLESS,

called as a witness by the plaintiff, having first been duly sworn, was examined and testified as follows:

THE CLERK: State your full name, address and occupation.

THE WITNESS: John Raymond Lawless. My address is 10241 Shoreview Drive, North Jacksonville, Florida.

THE COURT: Your business?

THE WITNESS: I am an Internal Revenue Agent.

THE COURT: How long have you been such?

THE WITNESS: Seven years.

DIRECT EXAMINATION

BY MR. MATTHEWS:

Q Mr. Lawless, sir, have you in the course of your duties had occasion to see Robert T. Mathis?

A Yes, sir.

Q Would you recognize him if you saw him again, sir?

A Yes, I would.
Q Is he in the courtroom here today?
A Yes, he is.
[fol. A-43] Q Would you point him out?
A That is Mr. Mathis over there (indicating).
MR. MATTHEWS: Let the record so reflect.

BY MR. MATTHEWS:

Q Will you tell us, sir, the first occasion that you saw Mr. Mathis?
A My first occasion was on October 30, 1964, when it was necessary for me to visit Mr. Mathis at the—
Q And what was the purpose of your visit to Mr. Mathis?
A The prime purpose of my visit was to, first of all, determine if the returns that were assigned to me were returns prepared by Mr. Mathis; and second, to get form 872 executed extending the statute of limitations on these returns, this particular return.
Q I would like to show you Government's Exhibits No. 1-A and 2-A in evidence and ask you if you can identify those.
A Yes, sir. These are the returns which were assigned to me.
Q Were those the returns with which you were seeing [fol. A-44] Mr. Mathis?
A Yes, sir. On October 30, 1964, I visited him in regard to the 1040A filed for 1960.
Q And did you have the returns which are Government's Exhibits 1-A and 2-A, with you at the time of your visit?
A Yes, sir, I did.
Q What, if anything, did you do, sir?
A Well, first of all, I asked Mr. Mathis if this was the return which he had filed, and if so, if this was his signature.
Q What exhibit do you have reference to?
A The 1040A for 1960.
Q Was there any response with reference to—
A He said that this was his signature.
Q Did you also ask him whether or not that was his return?

A Yes, and he said that this was the return which he had filed.

Q Now—

MR. LURIE: If the Court please, at this time I am going to object to any questioning of this man unless [fol. A-45] the Government is prepared to prove that he was advised of his rights.

THE COURT: I will overrule that. You don't have to advise everybody of his rights every time you ask him questions.

I think we are coming to that pretty quickly if the Supreme Court keeps on.

MR. LURIE: We have come to it in the case of Miranda vs. Arizona.

THE COURT: Oh, no. Miranda says, If you arrest a man, you have a collar on him, you can't ask him any questions. That is all it says.

MR. LURIE: Well, we will put the collar on him, Judge.

BY MR. MATTHEWS:

Q Mr. Lawless, was there any criminal investigation that you were conducting at this time at all, sir?

A No, sir. At this time all I was attempting to do was to determine the correct tax on these returns.

Q Thank you. Now, I would ask you to take a look at Government's Exhibit No. 1-C in evidence and tell me [fol. A-46] whether or not you can identify it.

A Yes, sir. This is the form 872 extending the period of the statute of limitations on Mr. Mathis' 1960 form 1040A.

Q And on what occasion was this form executed?

A This was on the occasion of my first visit on October 30, 1964.

Q Was the form executed in your presence?

A Yes, it was.

Q Your identifying initials thereon?

A They are, yes, sir.

Q What executions were required to be made on the form?

A That Mr. Mathis sign the form and then that the form be validated by the District Director or his representative.

Q Did Mr. Mathis sign that form in your presence?

A Yes, he did.

Q You saw him sign his name thereto?

A Just as it was on his tax return.

Q Now, did you have any further conversation with [fol. A-47] Mr. Mathis at that time concerning any of the tax information needed?

A Yes. Prior to the time that I secured the 872, I advised him of what his rights were in regard to the form. I explained to him that he was not required to sign this form, but, rather, this was a form that he could sign, giving us additional time to execute the tax return and determine the proper tax.

Q Did you have occasion in your official duties to again see Mr. Mathis?

A Yes, sir.

Q When was that, sir?

A My second visit was on March 2, 1965.

Q What was the purpose of that visit?

A That visit was to extend—to get another form 872 on his 1960 1040A, again extending the extending the statute of limitations.

Q This is another year than the one that you previously referred to?

A No, I had to get another form 872 on this same return because the statute was again approaching the time when it would run.

Q Did you have the 1040A with you on that occa- [fol. A-48] sion?

A Yes, sir.

Q Did you again exhibit it to Mr. Mathis?

A Yes.

Q Was such an extension, which is form 872, executed at that time?

A Yes, it was.

Q Do you have that Government's Exhibit 1-D, I believe?

A Exhibit 1-D, no.

Q I show you what is Government's Exhibit 2-B in evidence, and ask you if you recognize that form, sir?

A Yes, sir, this is a form 872 which I asked Mr. Mathis to execute in regard to his form 1040A for 1961.

Q Where was this done, Mr. Lawless?

A This was done at the Florida State Prison at the same time the 872 was executed.

Q Was it executed or his name signed in your presence?

A It was.

Q Was Mr. Mathis at this time explained the purpose [fol. A-49] of signing or not signing the extension, the 872 form?

A The reason, I explained to Mr. Mathis, was that additional time was still needed to develop the correct tax on these returns.

Q I would like to show you now what is in evidence as Government's Exhibit No. 1-D, and ask you whether you have seen that previously, and if so, tell us under what circumstances.

A This is the form 872 giving us a further extension on the 1040A for 1960.

Q And that was executed by Mr. Mathis in your presence?

A Yes, sir, March 2, 1965, at the same time the 872 for '61 was executed.

Q I would like to again show you Government's Exhibit 2-A which is the tax return 1040A for the year 1961, and ask you whether or not you had that in your possession on either occasions of your visit to Mr. Mathis.

A This was in my possession on the occasion of the second visit when I secured the form 872 in regard to this return.

[fol. A-50] Q Did you exhibit it to Mr. Mathis?

A Yes, and I asked if this was his return and he stated that it was and that it was his signature.

Q What did he state with reference to his signature?

A Stated this was his signature.

MR. MATTHEWS: I have no further questions.

CROSS EXAMINATION

BY MR. LURIE:

Q Mr. Lawless, you say the first time you visited Mr. Mathis, this defendant, was in October, 1964. Is that right?

A That is right, October 30, 1964.

Q And this was with reference to what tax? What year did you go to see him about?

A This was in reference to his form 1040A for 1960.

Q 1960. That was filed in 1961?

A That's right, sir.

Q Prior to April 15th?

Now, when you went to see him had you been investigating his return?

A I had not prior to that time.

[fol. A-51] Q Had anybody in your office been?

A Not in my office. It was prior to that time, assigned to a Revenue Agent in Lakeland, Florida.

Q Was there anything in your investigation that showed a possibility of a criminal violation?

A There was no definite indication of anything which would cause me to refer it for investigation.

Q But there was that possibility at the time you went to see him, isn't that right?

A Well, possibly, there was.

Q Now, when you did go to see him and before you asked him any questions whatsoever—He was in the penitentiary at the time, wasn't he?

A Yes, he was.

Q At Raiford; is that right?

A That's right.

Q And did you at that time state to him that he did not have to answer any questions or sign any documents that may tend to incriminate him, and that if he did sign any documents or answer any questions, that they might be used against him at some other time?

A No, sir.

[fol. A-52] MR. MATTHEWS: Your Honor, I am going to object to that question. He indicated the purpose

of his visit had absolutely nothing to do with any criminal investigation at that time, and we don't think it is material.

MR. LURIE: Oh, no, he didn't.

THE COURT: He said no.

MR. LURIE: The possibility of a criminal—

THE COURT: Oh, any time there is the possibility that they will investigate every tax return that you ever made. There is a possibility.

MR. LURIE: I am laying a basis for some further time. I think I have the right to ask these questions.

THE COURT: Possibly; is that a basis?

MR. LURIE: I am asking these questions—

THE COURT: Well, go ahead. He has answered them.

MR. LURIE: All right.

BY MR. LURIE:

Q Did you advise him that he was entitled to have a lawyer before you questioned him?

A No, sir, I did not.

[fol. A-53] Q Did he waive any constitutional right that you might have explained to him?

A He did not waive any constitutional right. The only form that he executed in my presence was a form 872.

Q But you didn't advise him of any of his constitutional rights at that time?

A I advised him of his right in regard to th form 872.

Q You mean that he didn't have to sign it if he didn't want to?

A That's right, I explained that to him.

Q But you didn't tell him that it might be used against him at some other time?

A I told him this form might be in his favor or in the Government's favor, and that the main purpose of this was to give us additional time in order to determine the case.

Q But there was a possibility at that time of a criminal prosecution?

MR. MATTHEWS: Your Honor, I object to this.

THE COURT: I say there is a possibility of criminal [fol. A-54] prosecution on any man that has ever made a return.

MR. LURIE: Judge, I feel this way about it. This is three years after this thing was filed. They knew where they were going then.

THE COURT: I feel this way about it. Let's get on with the case. I have ruled. Maybe I am wrong. You can take that up. Go on.

MR. LURIE: All right.

BY MR. LURIE:

Q That was in October of 1964. Right?

A Yes, sir.

Q Now, in February of 1965 did you write him a letter?

A In February?

THE COURT: A letter identified here.

MR. LURIE: No, this is a different letter.

BY MR. LURIE:

Q Did you write him a letter over your signature?

A I think that I did.

Q And you wrote him—

[fol. A-55] A Which was not answered.

Q And you enclosed consent forms for him to sign?

A Right.

Q And he didn't sign them?

A That's right.

Q And that is why you went back up there in March of 1965?

A That is why I went the second time.

Q Yes. And you wanted to know why he didn't sign them, is that right?

A I wanted to know what the situation was.

Q Now, by March 2, 1965, did you know at that time whether or not there was going to be a criminal prosecution against this man if it was found—

A No, sir.

Q —found there was—

A No, I had no way of knowing there would be a criminal prosecution.

Q Did you conduct the investigation at all?

A I conducted the investigation up to this point alone; that is right.

Q Alone?

[fol. A-56] A Right.

Q Up to that point what did that investigation show, up to that point?

A The investigation up to that point showed nothing conclusive.

Q Nothing conclusive?

A That is right.

Q But there was a possibility. Right?

A Well, I think, as the Judge mentioned, there was always a possibility.

Q Now, when you got back up there on March 2, 1965, did you advise him of his constitutional rights, that he didn't have to answer any questions or sign any documents; and that if he did answer questions or sign documents, that they may even be used against him at some other time?

A I advised him of his rights in regard to the form 872.

Q And that is that he didn't have to sign it if he didn't want to?

A Right.

Q But as to the questioning before you started to question—

[fol. A-57] A I didn't question him at all on the second visit.

Q Didn't you ask him if he signed these other documents?

A Well, I asked him if this was his return, to identify the return.

Q Was that before you presented the 872 form to him?

A Yes, sir.

Q And before you asked him these questions did you tell him that anything he might say might be used against him at some other time?

A I did not.

Q Did you advise him that he didn't have to say anything if he didn't want to?

A No.

Q Did you advise him that he was entitled to have counsel?

A No, I did not.

Q That is with reference to Government Exhibit—

THE COURT: I think he said with reference to both, all the papers there in evidence.

[fol. A-58] MR. LURIE: All the papers.

THE COURT: Never advised him anything except about the 872—he didn't have to sign unless he wanted to, and that it was an extension.

BY MR. LURIE:

Q As to the income tax returns, you didn't advise him as to any questions that you asked him about that?

A The only questions that I asked him were in regard to the returns, if those were the returns that he filed, and if so, were those his signatures.

Q Yes. But prior to your asking those questions you didn't advise him of any of his rights?

A I did not.

Q None whatsoever?

A No, sir.

Q And you say that by March 2, 1965, your files showed no indication of a possible criminal defense or charge?

A I didn't say possible criminal defense.

Q I mean offense, not defense. I said it wrong. But you said that was a possibility?

A Well, I repeat, I say, as the Judge said, there is [fol. A-59] always a possibility.

MR. LURIE: All right.

May I ask, Mr. Matthews, you didn't question him about this 1-B at all, did you?

BY MR. LURIE:

Q Do you know anybody in your office that has the initials "RRM"?

A That is the revenue agent from Lakeland, Florida, who was originally assigned the case.

Q What is his name?
A McConnell is his last name.
Q McConnell. Did he make any reports to you with reference to this?
A The case was transferred to me whenever Mr. Mathis was transferred to the Florida State Prison because that was in the Jacksonville area.
Q Well, I am going to ask you to identify this letter of February 1, 1965, bearing your signature. Is that your signature?
A Yes, sir.
Q And that was sent to Mr. Mathis, is that right?
A Yes.
[fol. A-60] Q Where did you send it?
A That was sent to his Winter Haven address.
Q At the time you knew he was in the penitentiary, didn't you?
A That's right.
Q Why did you send it to the Winter Haven address?
A So it would be forwarded to him.
Q If you sent it directly to the pententiary, he would have gotten it, wouldn't he?
A His wife was at this address.
Q Do you know whether his wife was there?
A I know she was.
Q Did you visit her there?
A At a later date.
Q How long after?
MR. MATTHEWS: Your Honor, I am going to object. This is outside the scope—
THE COURT: I think you are getting into details now that are not important. Sustained.
MR. LURIE: I am going to ask that this be introduced in evidence as Defendant's Exhibit No. 2.
[fol. A-61] THE COURT: Wait until we get to your case.
MR. LURIE: Well, mark it for identification.
THE COURT: For identification, yes; not for evidence, unless he agrees.
MR. MATTHEWS: I would agree if he is willing to accept the consequences of introducing evidence on my case.

MR. LURIE: No consequences.
THE COURT: Well, if you agree. Do you want it in?
MR. LURIE: Do I want it in?
THE COURT: Yes.
MR. LURIE: Not now. I will wait.
THE COURT: I don't think it is very important.
MR. LURIE: I will wait. I will wait. No other questions.

(The document referred to was marked Defendant's Exhibit 2 for identification.)

[fol. A-62]

REDIRECT EXAMINATION

BY MR. MATTHEWS:

Q Mr. Lawless, what, specifically, is your title with the service?
A I am a Revenue Agent.
Q And as a revenue agent you are a criminal investigator?
A No, sir.
Q Sir, when a file that has criminal potential comes to your attention, what are you required to do?
A When there are definite indications of fraud or criminal potential, my first duty is at that time to refer the case to the Intelligence Division.
Q Did you make such a reference in this case?
A Yes, I did.
Q When was that reference made?
A The date was March 10th, I believe of—
Q Of what year?
A Of 1965.
Q After March 10th, 1965, did you have any other occasion to visit Mr. Mathis?
[fol. A-63] A On one other occasion. Mr. Schilling and I visited him together.
MR. MATTHESS: I have no further questions.
MR. LURIE: I want to ask some questions.

RECROSS EXAMINATION

BY MR. LURIE:

Q When did you visit him the last time with Mr. Schilling?
A The date?
Q Yes.
A The exact date I don't recall. It is in Mr. Schilling's file.
Q Was that after March 10th after you had recommendaed a criminal prosecution?
A Ye , sir. In fact, the date was June 9, 1965.
Q And where did you visit him?
A Where?
Q Yes.
A At the Florida State Prison.
Q And did you ask him any questions?
A I didn't talk to him at all at that time. Mr. Schil-
[fol. A-64] ling introduced himself and did all the talking.
Q You heard what was said?
A Yes, sir.
Q Did Mr. Schilling ask him any questions?
A Mr. Schilling first of all advised him of his constitutional rights.
Q What did he say?
A He said he preferred not to talk.
Q I mean what did he say in advising him. How did he do it?
A My job does not cover learning that particular description of constitutional rights.
Q I am not mad at you. Don't get mad at—
A I am not mad at you, either. I am just answering your question.
THE COURT: He said he preferred not to talk, so that ended that, I presume.

BY MR. LURIE:

Q That ended the conversation?
A Yes, sir. We excused ourselves and left.
Q On March 2nd, the last time you saw him by yourself, and got these 872's signed—
A That's right.

[fol. A-65] Q —on March 10th you recommended criminal prosecution?

A Yes.

Q And you mean to tell us that on March 2nd you didn't know that there was going to be a criminal prosecution or had no idea of it?

A I mean to tell you that a lot of things can take place over a week that will cause you to reach a decision.

Q On March 2nd you didn't—you mean to tell us now that on March 2nd, eight days prior, you didn't know there was going to be a criminal prosecution or that you were going to recommend it?

A Not definitely.

Q Not definitely, but you had an idea, didn't you?

A Well, it is very likely that I had an idea. As the pieces fall together you gradually reach the point of reaching a conclusion.

Q But you were investigating for the purpose of determining whether there should be a criminal prosecution or not, is that right?

A I was investigating in order to determine whether [fol. A-66] there was any reason to refer it or not, or whether there was any tax involved.

Q Reason to refer it as a criminal prosecution, is that right?

A If I referred it, that is what it would be for.

Q You were then making an investigation at that time?

A No; I was making an income tax investigation.

THE COURT: I think that is all.

MR. LURIE: No more questions.

If the Court please, at this time I am going to ask that all of Mr. Lawless' testimony with reference to any conversations with this defendant, any signatures that he obtained from this defendant, be stricken from the record on the ground it was obtained in violation of the defendant's constitutional rights.

THE COURT: I will deny the motion.

[R. 51-55]

[fol. A-67] THEREUPON:

WALTER J. HERRON,

called as a witness by the plaintiff, having first been duly sworn, was examined and testified as follows:

THE CLERK: State your full name, address and occupation, please.

THE WITNESS: Walter J. Herron, Special Assistant Treasurer of the United States, Washington, D. C.

DIRECT EXAMINATION

BY MR. MATTHEWS:

Q Mr. Herron, sir, how long have you been employed with the Treasury Department.

A Twenty-eight years.

Q Did you, pursuant to my request, bring with you certain records of that department?

A Yes, I did.

Q Do you have those with you?

A (Handing documents.)

MR. MATTHEWS: If the Court please, I would request to have these marked as Government's Exhibits 3 and 4 for identification.

THE COURT: Counsel, do you want to look at these? They apparently are checks.

[fol. A-68] MR. LURIE: What is that, Judge?

THE COURT: Here are a few checks. Do you want to look at them?

(The documents referred to were marked as Plaintiff's Exhibits 3 and 4 for identification.)

BY MR. MATTHEWS:

Q Mr. Herron, I show you Government's Exhibits 3 and 4 and ask you if you can identify them for me. Tell me what they are.

A Yes, sir.

MR. LURIE: Do you want to introduce them?
MR. MATTHEWS: I will offer them when—
MR. LURIE: Okay.
THE COURT: What are these instruments? What are they, do you know?
THE WITNESS: Yes, sir. They are two Government checks, tax refund checks, your Honor.
THE COURT: Were they issued?
THE WITNESS: Yes, sir.
THE COURT: Were they cashed?
THE WITNESS: Yes, sir.
THE COURT: Go ahead.

[fol. A-69] BY MR. MATTHEWS:

Q When and how did you obtain them, sir?
A At the request of your office here in Miami. We obtained them from the Paid Check Facility which is in Pennsylvania.
Q And is that facility associated with the Department of which you are Assistant U.S. Treasurer?
A Yes, sir; they are under my custody.
Q And supervision and control?
A Yes, sir.
Q Is it a part of your duty, sir, to have such documents maintained at the record center that you referred to?
A That's right.
Q And you have had them in your custody since—
A Since they were paid by the Treasurer.
MR. MATTHEWS: The Government would offer Exhibit No. 3 at this time.
THE COURT: Consisting of two alleged refund checks.
MR. LURIE: I won't object to it as being a check, if the Court please, but they still haven't connected it up with my client, other than—
[fol. A-70] THE COURT: Well, they have a similar name on them, let us say.
MR. LURIE: That is all, same name.
THE COURT: Objection overruled.
THE CLERK: Did you offer them both at this time?

MR. MATTHEWS: I am just offering No. 3 at this time.

(The document referred to was marked Plaintiff's Exhibit 3 in evidence.)

BY MR. MATTHEWS:

Q I have no further questions.

CROSS EXAMINATION

BY MR. LURIE:

Q Mr. Herron—is that your name, sir?
A That is, yes.
Q —you don't know anything more about these checks other than they were issued, is that it?
A I know that the checks were issued and I know the checks were paid by the Treasurer who is drawee of the checks.
Q When was the first time that these checks were [fol. A-71] called to the attention of your department, if you know?
A I could not give you the exact date. Mr. Matthews may be able to furnish that to you.
Q Was that prior to October of '64?
A I cannot answer the question. I do not know without—
Q Did you make a statement to Mr. Matthews as to when the checks were first brought to your attention?
A Well, Mr. Matthews requested that I bring the checks with me, which I did.
Q Did you, in writing about these checks prior to his asking you to bring them down?
A Nothing at all, sir.
Q There was nothing in your department to indicate that those checks were being investigated prior to your being asked that they be brought down here?
A No, sir.
Q Nothing at all?
A I know nothing of that.
MR. LURIE: No questions.

[fol. A-72] MR. MATTHEWS: No further questions of Mr. Herron.

THE COURT: That is all.

We will take an afternoon recess for ten minutes.

(Thereupon, a short recess was taken after which the following proceedings were had:)

THE COURT: Do you each waive the polling of the jury, and consent they are present and have been present throughout the trial, and the defendant is present and has been present throughout the trial?

MR. MATTHEWS: The Government so waives, your Honor.

MR. LURIE: The defendant so waives.

THE COURT: You may proceed.

Call your next witness.

THEREUPON:

[R. 56-63]

JAMES CLARENCE TUGERSON,

called as a witness by the plaintiff, having first been duly sworn, was examined and testified as follows:

THE CLERK: State your name, address and occupation.

THE WITNESS: James Clarence Tugerson. My oc-
[fol. A-73] cupation is policeman with the City of Winter Haven, Polk County, Florida.

Q How long have been so engaged in that occupation?

A About nine and a half years.

Q Where do you presently live, Mr. Tugerson?

A Winter Haven, Florida, 311 Avenue P, Northwest.

Q Do you know Robert T. Mathis?

A Yes, sir.

Q Do you see him in the courtroom?

A Yes, sir.

Q Would you point him out, please?

A Sitting to the left (pointing).

MR. MATTHEWS: Let the record reflect that he has pointed to the defendant.

BY MR. MATTHEWS:

Q How long have you known Mr. Mathis?
A I have known Mr. Mathis since childhood.
Q Where was this acquaintance?
A In Winter Haven, Florida.
Q Now, before today, when is the last time you have seen him?
[fol. A-74] A 1962, possibly the first month in '63. That was in Winter Haven?
Q In Winter Haven.
A Yes, sir.
Q How long a period of time had you seen him in Winter Haven before 1962?
A Probably the latter part of '60, through '61 he was there in Winter Haven, Florida.
Q Did you have occasion to see him there frequently? Just how often did you see him?
A As a patrolman, I worked daily and usually I would see Robert two to three, sometimes four times per week.
Q Where was this?
A That was on First Street, usually, in Winter Haven, Florida.
Q Do you know whether he was employed at that time?
A In 1960 he wasn't, to my knowledge, and '61, approximately—about August of '61 he did open a business place.
Q Now, during the latter part of 1960 and for the entire year 1961, do you recall any time that he was ab-
[fol. A-75] sent from the city for any extended period of time?
A Not to my knowledge.
THE COURT: Would you have known if he had been away for more than two weeks, say?
THE WITNESS: Yes, sir.

BY MR. MATTHEWS:

Q Did you have occasion, sir, as a patrolman, to go into the business that you say he later opened and operated there?
A Yes, sir.

Q Did you see him there?

A He was there in the business most weekends when we were there, and Robert was there during the week nights when we entered his business. He was there.

Q Do you recall any time during the latter part of 1960 or the year of 1961 that you did not see him within the period of a month?

A I would say no, because most time I would see Robert every—once a week, usually, on the street there.

Q The two of you grew up together?

[fol. A-76] A Yes, sir.

MR. MATTHEWS: No further questions.

CROSS EXAMINATION

BY MR. LURIE:

Q Prior to 1960 did you see him?

A Occasionally I would see him when I was coming home prior to '60. I was employed as a policeman. I got a leave of absence during the summer to go play professional baseball and when I would come back during the winter, I didn't see him.

Q You didn't see him during the winter?

A No, sir. Occasionally I would; if he was home on leave, I would see him.

Q From what?

A The Army.

Q He was in the Army for about fifteen years, wasn't he?

A Yes, sir.

Q And how often would you see him during those fifteen years?

A Occasionally I would run into him when he came home on leave. At one time, I think in '46—'45, rather, we came home from New Orleans together.

[fol. A-77] Q You knew him all your lifetime, is that right?

A Just about all my life.

Q He had a pretty good reputation in town, didn't he?

MR. MATTHEWS: Objection. He is asking his reputation.

THE COURT: I will sustain it. It isn't your turn yet.

MR. LURIE: I would like to ask it.

THE COURT: That is out of the direct.

MR. LURIE: I would like to ask it some time.

THE COURT: All right.

BY MR. LURIE:

Q Now, you said you saw him the last time in 1963.

A On or about the first month in 1962.

Q Month?

A Month, which would be January.

Q Where was that?

A Where did I see him?

Q Yes.

[fol. A-78] A In his business establishment at 1701 Fourth Street, Northeast, in Winter Haven, Florida?

Q In 1963?

A No, sir.

Q When was that?

A You asked the question, you said 1962.

THE COURT: You said '63. Do you mean '63 or '62?

BY MR. LURIE:

Q The last time you saw him was in 1963?

A 1962.

Q You didn't see him in 1963?

A Not that I can recall, in 1963.

Q When was the last time you saw him in 1962?

A In '62, in the first month, which would be January of '62, I saw him.

Q What kind of business was he in?

A He ran a cafe.

Q Cafe?

A Yes, sir, restaurant.

Q You saw him at least once a week?

A More than that.

[fol. A-79] Q Was that part of your beat?

A Yes, sir.

MR. LURIE: No more questions.

REDIRECT EXAMINATION

BY MR. MATTHEWS:

Q You said that you knew he was in the Service for some long period of time.
A Yes, sir.
Q Do you know approximately when he got out of the Service?
A I think it was—I am not sure—I think approximately it was about '59 or either '60 he came out of the Service.
MR. MATTHEWS: No further questions.
MR. LURIE: No more questions.
THE COURT: That is all.
MR. MATTHEWS: I would like to excuse him, if I may.
THE COURT: All witnesses are excused when they leave the witness stand unless special request is made.

[fol. A-80] THEREUPON:

[R. 64-76] JOEL WILBURN,

called as a witness by the plaintiff, having first been duly sworn, was examined and testified as follows:

THE CLERK: State your full name, address and occupation.
THE WITNESS: I am Joel Wilburn, 344 Quinton Avenue Northwest, Winter Haven.
THE COURT: Your business, Mr. Wilburn?
THE WITNESS: I work for the Winter Haven Police Department.
THE COURT: For how long?
THE WITNESS: Fourteen years.
THE COURT: You may proceed.

DIRECT EXAMINATION

BY MR. MATTHEWS:

Q How long have you lived in Winter Haven?
A For forty-seven years, almost forty-eight.
Q Do you know Robert T. Mathis?

A I do know Robert.
Q Do you see him in the courtroom, sir?
A I do.
Q Would you point him out, please?
A This is Robert Mathis (pointing).
[fol. A-81] MR. MATTHEWS: Let the record so reflect that he is pointing to the defendant.

BY MR. MATTHEWS:

Q For how long a period of time have you known Mr. Mathis?
A All of his life, practically all of his life; since childhood.
Q Before today, when is the last time that you had seen Mr. Mathis?
A The last time I saw him was in January, 1962.
Q Now, prior to that time, January, 1962, had you seen Mr. Mathis?
A I had.
Q Where did you see him? Did you see him during the year 1961?
A I did.
Q Where did you see him during that year?
A In Winter Haven.
Q How frequently did you have occasion to see him there in Winter Haven?
A Well, he was there quite often.
Q Do you recall any extended periods of time that you [fol. A-82] didn't see him in Winter Haven?
A No, I do not. I do not recall that.
THE COURT: What do you mean by "quite often"?
THE WITNESS: Constantly. He is right there.

BY MR. MATTHEWS:

Q Is that two or three times a week that you would see him?
A Yes; daily, almost.
Q That was for the entire year of 1961?
A Right.
Q Now, did you have occasion to see him at all in the year 1960?
A I did.

Q What part of the year did you see him in 1960?
A It was the latter part of the year, the last two or three months, something like that.
Q For the last two or three months of 1960, how frequently did you have occasion to see him?
A He was there about as often as any.
MR. MATTHEWS: I have no further questions.

[fol. A-83]

CROSS EXAMINATION

BY MR. LURIE:

Q Prior to 1960 how often did you see him?
A Prior to 1960?
Q Yes.
A I didn't—I think he was in the Service at that time.
Q How long was he in the Service, do you know?
A I do not know.
Q Ten, twelve, fourteen, fifteen years?
A Well, it was a good deal of time, but I couldn't say the definite time.
Q You said the last time you saw him in Winter Haven was in January of 1962, is that correct?
A January of '62, if I can recall right, that is, yes.
Q Did you see him in March or April or May or June of 1962?
A I don't recall that at all.
Q Why do you say January of '62? What makes you remember January of '62?
A Well, in January of '62, I had occasion to pick him [fol. A-84] up at that time, and I know it was in January.
Q What did you pick him up for?
A I had a warrant for him. I mean, I had a warrant at one time, and then again, it was on an offense of a check forgery.
Q Wasn't he in Winter Haven until June of 1962?
A I cannot recall that late.
Q As a matter of fact, he was arrested on a warrant for a check and put in jail in June of 1962, isn't that right?
A No, no.

Q Wasn't he in Winter Haven from January until June when he was picked up on that check?

A I don't recall that late a date.

Q And that is what he is in Raiford for, isn't that right?

A I don't think so.

Q Did you have anything to do with his prosecution?

A No, no, not no more than my job.

Q Your job was to arrest him?

[fol. A-85] A My job was arresting officer.

Q Do you have any of your records with you?

A I don't have them here.

Q When was the last time you looked at your records?

A I looked at my records prior to coming here and I do have some in the hall, but I don't need them.

Q Well, would you know the date you arrested him on the warrant?

A If I am not mistaken, I think it is the 20th. The 20th, I think it is.

Q Of January?

A January.

Q The 20th of January. Was he in jail on the 20th of January?

A I can't recall that.

Q I mean when you arrested him you put him in jail, didn't you?

THE COURT: Where did you find him, if you arrested him?

THE WITNESS: He was at his place of business.

[fol. A-86] BY MR. LURIE:

Q Yes?

A On First Street, and if I am not mistaken, I asked him to come to the station and he wanted to go with me at that time.

Q When did he come into the station?

A I took him into the station.

Q On the 20th of January of 1962?

A It is the 2nd or the 20th. 2nd or 20th, I can't recall those two dates exactly, but it was in January.

Q Now, you said it was the 20th. Do you have your records here?

A The first time I picked him up was concerning the check and the next time I picked him up was for the actual arrest of the man.

Q Well, in other words, you picked him up and asked him about the check, then you arrested him later on?

A I picked him up and he was for investigation, yes.

Q And then you arrested him later on?

A Right.

[fol A-87] Q And that was on January 20th when you actually arrested him. Right?

A If I can recall.

Q And when you picked him up, arrested him, did you put him in jail?

A Arrested him and put him in jail, yes. After we got through processing the case he was put in jail.

Q Do you know how long he stayed there?

A I don't recall that.

Q Was it three, four, five, six days, two weeks?

A I don't recall the amount of days.

Q Was he in there for any length of time after you arrested him?

A I don't think it was any length of time. I don't recall the amount of days.

Q Was he ever out on bail, that you know of?

A I don't recall that.

Q Would your records show that he was out on bail?

A No, no.

Q Why not?

[fol. A-88] A Because I do not have that record showing that he got out on bail.

Q But he was in there for some length of time that you know of?

A I did not say that. I say I do not recall how long he was in jail?

Q When did you talk to anybody about this case prior to today?

A Prior to today—it didn't come up prior to today.

Q You mean this is the first time you have ever said anything about what you know in this case?

A This morning—yesterday afternoon—I think it was this morning that I was spoken to.

Q By whom?
A I talked to the attorney about it.
Q Mr. Matthews?
A I did.
Q Did you ever talk to any of the F.B.I. men or Internal Revenue men that were investigating this case?
A When their investigation came about, yes.
Q Who were they?
[fol. A-89] A The former F.B.I. agent who was in here, the second one before Mr. Tugerson. The family of the people were there. He wanted to see his wife.
Q Mr. Lawless, you mean?
A Yes.
Q And did Mr. Lawless ask you questions?
A Not that. Mr. Lawless was working on the case. He came to town, wanted to find the family and talk to the family.
Q When was that?
A I don't recall that particular time.
Q Was that in 1964?
A I don't recall.
Q How far back was it, approximately?
A It was—might have been '64, but it wasn't—not in '65. I don't think it was '65. I don't know for sure. If I gave you a specific date I would be wrong, because I don't—
Q I am not asking for—
THE COURT: Was it a couple of years ago?
THE WITNESS: It was a year and a half, something similar.

[fol. A-90] BY MR. LURIE:

Q Would you say it was before March 2, 1965?
THE COURT: If you don't know—
THE WITNESS: I couldn't recall that date.

BY MR. LURIE:

Q That is less than a year and a half ago. Do you recall now?
A If I would tell you, I would be—I don't see that I could remember that particular date.

Q Did Mr. Lawless ask you about whether or not you saw him around town at that time?

A Yes, at certain times; if at intervals was he at town, in intervals before.

Q During 1960 and '61?

A Yes.

Q He asked you those questions at that time?

A If I am not mistaken, he asked the question of when was the last time I had seen Mr. Mathis around.

Q And you told him in January of '62?

A And was he around at such and such a time after '61, or something like that.

[fol. A-91] Q You say that was about a year and a half ago?

A I wouldn't say definite. Similar to a year and a half.

Q You made no record of that?

A No record of that.

MR. LURIE: Do you have a report from Mr. Lawless as to his questioning of this man?

MR. MATTHEWS: No.

MR. LURIE: Do you, Mr. Schilling?

MR. SCHILLING: A report?

MR. LURIE: Yes, of his questioning of this man.

MR. SCHILLING: I made some notes on it. He said I made some notes on it.

MR. LURIE: May I see those notes for the purpose of cross examination under the statute?

THE COURT: Mr. Lawless' report?

MR. LURIE: Mr. Lawless' report of his questioning of this man and when it was. I think it is important.

THE COURT: Yes, if Mr. Lawless made a report, if he testified—

[fol. A-92] MR. LURIE: He has got Mr. Lawless' notes.

MR. MATTHEWS: You misunderstood him.

MR. LURIE: Your notes. Did you examine him? You were there at that time? All right, I will put you on, then.

THE COURT: Well, he is available.

MR. LURIE: He is available, he isn't going to run away.

No more questions of this man.
MR. MATTHEWS: I have no further questions.
THE COURT: Step down.

THEREUPON:

[R. 76-80]

RUSSELL P. RICHARDSON

called as a witness by the plaintiff, having first been duly sworn, was examined and testified as follows:

THE CLERK: State your full name, address and occupation.
THE WITNESS: Russell P. Richardson, 7890 S.W. 78th Street, manager, Miami office of the Florida State Unemployment Compensation.

DIRECT EXAMINATION

BY MR. MATTHEWS:

Q How long have you been so employed in that capac-
[fol. A-93] ity, sir?
A I have been the manager there for six years.
Q Did you, pursuant to my request, bring certain documents from the Service over to me today?
A Yes, I did.
Q Will you take a look and see if these are the files that you furnished me with, sir?
A Yes, sir, these are.
MR. MATTHEWS: If the Court please, I would request to have this filed marked as Government's Exhibit No. 5 for identification.

(The document referred to was marked as Plaintiff's Exhibit No. 5 for identification.)

BY MR. MATTHEWS:

Q Now, sir, will you take a look at Exhibit 5 for identification and each of the documents contained therein and tell me whether or not you can identify them?
A Yes, I can identify these documents.

Q Are they official records of the Florida State Unemployment Compensation Division?

[fol. A-94] A Yes, sir, that's correct.

Q They are records kept in the ordinary course of the Compensation Division?

A Yes.

Q Is it in the ordinary course of the business of the Division to make and keep such records?

A Yes. Every individual who files a claim for unemployment compensation, we have a set of records like this for him.

Q Does this set of records reflect the file on one particular individual?

A Yes, it does.

Q To date is that file in your custody and under your control?

A It is.

MR. MATTHEWS: From Government's Exhibit No. 5 for identification, I would request to have this marked as Government's Exhibit 5-A, and this as 5-B, and this document as Government's Exhibit 5-C for identification.

(The documents referred to were marked as Plaintiff's Exhibits 5-A, 5-B and 5-C for identification.)

[fol. A-95] BY MR. MATTHEWS:

Q I show you Government's Exhibit 5-A, sir, and ask you if this is part of your official file that you testified with reference to?

A Yes, it is.

Q I show you Government's Exhibit 5-B and ask you whether that is a part of the official file that you have testified with reference to?

A Yes, sir.

Q I show you Government's Exhibit 5-C and ask you whether or not that is a part of the official file that you have testified to.

A Yes, it is.

MR. MATTHEWS: I would offer Exhibits 5-A, B and C in evidence at this time.

MR. LURIE: I have no objection to them being official documents, Judge, but they haven't as yet been connected up with my client.

THE COURT: I presume they are files pertaining to a person of the same name?

MR. LURIE: That is right.

THE COURT: So it may be your client or somebody else, according to your contention?

[fol. A-96] MR. LURIE: That is right.

THE COURT: I will admit them.

(The documents referred to were marked as Plaintiff's Exhibits 5-A, 5-B and 5-C in evidence.)

BY MR. MATTHEWS:

Q Do they indicate where the recipient of that money lived?

A Yes, they do.

THE COURT: Where?

THE WITNESS: Winter Haven.

THE COURT: Address?

THE WITNESS: Yes, sir, it is on the document. It has the individual's address there.

THE COURT: It has been admitted. Anything further?

MR. MATTHEWS: No further questions.

THE COURT: Cross examine.

MR. LURIE: No further questions.

THE COURT: That is all. Step down.

MR. MATTHEWS: Norman Worth.

THE COURT: Now, I suggest that all these documents, you at least let the jury know what they are, Mr. [fol. A-97] Matthews, as they are admitted and make it perhaps a little easier to follow the situation.

THEREUPON:

[R. 81-93] NORMAN WORTH,

called as a witness by the plaintiff, having first been duly sworn, was examined and testified as follows:

THE CLERK: State your full name, address and occupation.

THE WITNESS: Norman Worth, 15 Gifford Court, Maplewood, New Jersey. I am a revenue officer assigned to the Newark District, Internal Revenue Service.

DIRECT EXAMINATION

BY MR. MATTHEWS:

Q How long have you been so employed in that capacity, sir?

A Six years.

Q Did you, sir, pursuant to my request, make an investigation to determine the existence or the whereabouts of L. Williams Construction Company and J. W. Johnson Construction Company?

A Yes.

Q Will you tell us, sir, what you did and what you found and the results of your investigation?

[fol. A-98] A Yes. Can I refer to some of my notes?

Q Did you make a memorandum of the investigation you conducted?

A Yes.

THE COURT: And this memorandum will be available to you, counsel. Go ahead.

THE WITNESS: On the L. Williams Construction Company, the address as indicated was 1229 East 135th Street, Newark, New Jersey. There is no such address as 1229 East 135th Street, Newark, New Jersey, through my own knowledge and a check with the city map which I have produced that substantiated this.

BY MR. MATTHEWS:

Q Did you, sir, pursuant to my request, bring a city map of Newark?

A Yes.

Q Do you have that with you?

A Yes; it is right in the top copy.

MR. MATTHEWS: We would request to have this marked as Government's Exhibit No. 6 for identification.

(The document referred to war marked Plaintiff's Exhibit 6 for identification.)

[fol. A-99] BY MR. MATTHEWS:

Q I show you Government's Exhibit 6 for identification and ask you if that is the map you had reference to.

A Yes, sir.
Q And it is of the city of Newark?
A Yes.
MR. MATTHEWS: I would offer Government's Exhibit 6 at this time.
MR. LURIE: I don't know whether it is an authentic map of the city of Newark or not.
THE COURT: You may question him, if you like.
Mr. Witness, do you know if that map is a substantially correct map of the city—
THE WITNESS: Yes.
THE COURT: —of Newark?
THE WITNESS: I would say so, yes.
MR. LURIE: Do you know who prepared the map?
THE WITNESS: It was through—I think through the offices of some bank.
MR. LURIE: You mean you got it from a [fol. A-100] bank?
THE WITNESS: Yes.
MR. LURIE: Did the bank have it prepared or just have it in their possession?
THE WITNESS: I believe the bank had it prepared, but if I may, the Newark City Directory also has substantiation of the fact that this also—
MR. LURIE: I know you looked in here, in these books and didn't find the address you were looking for. You have that in your report.
THE COURT: Well, he says the map is substantially correct to his own knowledge. Is that right.
THE WITNESS: Yes, your Honor.
MR. LURIE: I still object to it.
THE COURT: It will be admitted.

(The document referred to was marked Plaintiff's Exhibit 6 in evidence.)

BY MR. MATTHEWS:

Q Continue, sir.
A The next employer noted, J.W. Johnson Construction Company, showing an address of Newark 5, New Jer- [fol. A-101] sey, so there was no actual street address there, so we had to go further.

I also conducted a search of the Essex County—that is the county in which Newark is located—records pertaining to the existence of either one of the employers noted, L. Williams Construction Company or J. W. Johnson Construction Company.

Shall I go through the—

Q For what years?

A Well, I checked actually records pertaining to the corporations, incorporsted business companies, Index L, index to firm names, index to business, banking and insurance corporations, index to co-partnerships on both employers beginning with the year 1879. I personally checked all these indices for the noted employers.

Q And were either of the employers that you were requested to search revealed?

A No.

Q What, if anything else did you do, Mr. Worth?

A I also checked the city of Newark directories for the period 1957 through 1958 and for the—which I [fol. A-102] brought along—and for the period 1964 through 1965. A complete check of these two books failed to disclose a listing for either employer.

Q Did you bring those with you?

MR. LURIE: I think the evidence with reference to that would be inadmissible with reference to the years not covered by this indictment. He checked the directories for 1957, 1958, 1964 and '65.

THE COURT: Did you check it from 1960 to '61?

THE WITNESS: There was no city directory prepared between '58 and '64.

BY MR. MATTHEWS:

Q So these are all of the directories that were prepared during the period from 1957 through 1965?

A 1965, yes.

Q And you have checked both of those directories?

A Yes.

Q And you have them here with you today?

A Yes.

Q And no determination, sir, was found of either one [fol. A-103] of the employers listed?

A That is correct.

Q Did you do anything else, sir—

A Yes.

Q —in your investigation?

A I checked with the Newark telephone company and I spoke with a Mr. A. Richardson, Special Agent for the New Jersey Telephone Company and I secured copies of the Newark telephone directories for the years 1960 through 1962, inclusive. It is five books because of the fact that their book begins in September, and I checked these for the employers noted and I could not locate same in these telephone directories.

MR. MATTHEWS: If the Court please, I would request to have the directory for the year 1957 and 1958 marked as Government's Exhibit No. 7.

MR. LURIE: I don't think that is material, '57 and '58, Judge.

THE COURT: Well, you know the directories are not published every year, counsel.

MR. LURIE: Yes, but '57 and '58 wouldn't indicate who was there in '60 and '61.

THE COURT: Well, they weren't there before and [fol. A-104] they weren't there afterwards. That is all we know. I agree, they might have been there. Could be.

MR. LURIE: I don't know why they have to go in.

BY MR. MATTHEWS:

Q Do these represent the pertinent pages of the directory of '64-65?

A Yes. I couldn't get the whole book, so for some reason I had difficulty securing the whole book.

MR. MATTHEWS: I suggest this go in for the directory for '64-'65 and be marked as Government's Exhibit 8.

MR. LURIE: I don't think that has anything to do with it, irrelevant.

MR. MATTHEWS: And all the telephone directories marked as a composite Exhibit No. 9 and I offer them in evidence.

THE COURT: They will be admitted for whatever value they have.

(The books referred to were marked as Plaintiff's Composite Exhibit 9 in evidence.)

[fol. A-105] CROSS EXAMINATION.

BY MR. LURIE:

Q When were you first asked to check into the L. Williams Construction Company and J. W. Johnson Construction Company?

A I would say—let's see—I conducted the investigation on June 14th and June 15th I compiled this data.

THE COURT: What year, now?

THE WITNESS: 1966. I was informed of this, I believe, the Monday of that week. In other words, a few days before.

BY MR. LURIE:

Q Prior to June of 1966 you knew nothing about this situation?

A That is correct.

Q Did your office have any reports on this situation other than what they asked you to do?

A Yes.

Q That is all they had?

A What do you mean, "other reports"?

Q With reference to any income tax returns.

A Well, there was other information secured on this. [fol. A-106] There was another revenue officer assigned to the case, I believe, in 1964.

Q In 1964 he was assigned?

A I am not sure.

Q Who was that?

A Mr. Sol Siff. He is a revenue officer.

Q Sol Siff?

A Siff.

Q How does he spell his last name?

A S-i-f-f.

Q And he was assigned to it in 1964?

A I believe so.

Q In other words, they were checking this all the way back to 1964, as far as you know, this question as to whether or not L. Williams Construction Company and J. W. Johnson Construction Company ever existed?

A When I say '64, if I may, I would like to explain

something. Mr. Siff was requested to come down here and testify—

Q In 1964?

A No, no, at this time, at this hearing, the 21st of June of this year.

[fol. A-107] Q Yes?

A But due to the fact he has a heart condition—

Q He knows more about it than you do, is that right?

A Yes. What I did, if I may just, you know, give you my feeling, knowing he could not make the trip, so what I did with him in his company, I compiled all this data. In other words, I retraced all steps conducted by him.

Q Do you know what he did in 1964?

A Yes.

Q What did he do in 1964?

A He checked the telephone books the same as I did. He checked the city directories the same as I did.

Q Was he told at that time when they were asking him to check at that time in '64, that there was a possible criminal violation here?

A I don't know.

Q You don't know?

A I don't know.

Q You never saw the letter directing or requesting [fol. A-108] the investigation from the Jacksonville office?

A I saw a letter. I don't recall if it made reference to a criminal action. I don't remember.

Q You don't know?

A This wasn't part of—

Q It started in '64, to check this?

A I believe so, yes.

MR. LURIE: No other questions.

REDIRECT EXAMINATION

BY MR. MATTHEWS:

Q Sir, do you know whether Mr. Siff did anything else in conjunction with this determination as to people in the business?

A When you say "people in the business"—

Q People in the construction business, as to the existence of the two companies we are—

A As far as I know, he did nothing, but I went further on that. I made a telephone contact on June 15, 1966, of John Gussi, President of New Jersey Building Construction Trades Council located in Patterson, New Jersey. In fact, I called him, I believe, on the 14th. He [fol. A-109] called me back on the 15th. And checking his records completely—

MR. LURIE: I am going to object because he is disclosing a conversation.

THE COURT: Sustained; hearsay.

BY MR. MATTHEWS:

Q As a result of anything you did, sir, are you able to confirm the non-existence of these two companies in the construction trades?

A Yes.

MR. MATTHEWS: No further questions.

MR. LURIE: No questions.

THE COURT: That is all.

THEREUPON:

[93-98] CHANCEL CARMICHAEL,

called as a witness by the plaintiff, having first been duly sworn, was examined and testified as follows:

THE CLERK: State your full name, address and occupation.

THE WITNESS: Chancel Carmichael.

THE COURT: Where do you live?

THE WITNESS: I live in St. Cloud, Florida.

[fol. A-110] DIRECT EXAMINATION

BY MR. MATTHEWS:

Q What is your address there, sir?

A 20 South Orange Avenue.

Q What kind of work do you do?

A Construction work.

Q Do you know Robert T. Mathis?
A Yes, sir.
Q Do you see him in the courtroom?
A Yes, sir.
Q Would you point him out, please, sir?
A Over here (pointing).
Q How long have you known him?
A Well, I just—I didn't know him but just a little while while he was in jail doing my time while I was in.
Q Where did you meet? When did you first meet him?
A In jail.
Q Where were you in jail?
A Kissimmee, Florida, Osceola County.
Q When was that? How long ago?
A About '62, I think. I disremember. I think it was
[fol. A-111] '62.
Q During the time that you were in jail, were you a trusty?
A At the time, yes, sir.
Q Did you have any dealings at all with Mr. Mathis while you were in jail there?
A Yes, sir.
Q What dealings, if any, did you have with him?
A Oh, he gave me a letter to give his wife—to mail for him—and I was supposed to—I ain't supposed to do that, so I gave it to the jailer at the jail.
Q He gave you a letter?
A Yes, sir.
Q What did he ask you to do with the letter?
A Give it to his wife, to mail.
Q And did you, in fact, give it to his wife to mail?
A No, sir.
Q What did you do with the letter?
A Give it to the head jailer.
Q Do you know who that was?
A Yes, sir.
[fol. A-112] Q What is his name?
A Mr. Woody.
Q Were you in a position that you could mail letters as a trusty? Were you out around the mail box so that you could mail a letter directly?

A Yes, sir.
Q Did you ever write any letters while you were in jail?
A Yes, sir.
Q Did you send your letters out directly?
A No, sir.
Q What did you do? What were you required to do with even the letters that you wrote?
A Give them to the jailer.
Q Was that for the purpose of having the mail censored?
A Yes, sir.
Q On this occasion you did not deliver the letter as requested by Mr. Mathis?
A No, sir.
Q And you gave it to Mr. Woody?
A Yes, sir.
MR. MATTHEWS: I have no further questions.

[fol. A-113] CROSS EXAMINATION

BY MR. LURIE:

Q When was that?
A It was in '62 or '63, if I could remember.
Q You are not sure? That is covering a lot of ground, isn't it?
A Well, I don't remember what year I got out.
Q What year did you get out?
A I don't remember that; it's been so long.
Q How long were you in there?
A Twelve months.
Q Wouldn't you remember what year—When did you go in?
A I don't know, sir, when I went in. I didn't keep up with it.
Q Was Mathis there when you went in?
A I don't remember, sir.
Q When was the first time you met Mathis?
A In jail.
Q When, in jail? When you first got there or after you were there a year, six months, eight months, nine months?

[fol. A-114]. A Well, after he was there. I don't remember whether he was there when I went there or he come there after I was there. I don't remember.

Q You don't remember?

A Two or three years ago; I don't.

Q What were you there for?

MR. MATTHEWS: Objection, your Honor. I don't think that has any relevancy.

THE COURT: Sustained.

BY MR. LURIE:

Q You never sent any letters out without giving them to the jailer to mail?

A No, sir.

Q Never did?

A No, sir.

Q You are sure of that?

A Yes, sir.

Q Never heard of it being done?

No more questions. They all do it.

MR. MATTHEWS: No further questions.

THE COURT: That is all.

MR. MATTHEWS: Do you want to proceed? It is nearing 5:00 o'clock.

[fol. A-115] MR. LURIE: Judge, I would like to go a little bit longer, for this reason—

THE COURT: All right, call another witness.

MR. MATTHEWS: Mr. Woody.

MR. LURIE: I have got to be in Jacksonville Friday morning.

THE COURT: Well, if you will hurry up—

MR. LURIE: I am supposed to be before the County Commission—

THE COURT: I say, if you act.

MR. LURIE: We will be through before then, but I have something tomorrow morning I would like to take care of before we come here.

THE COURT: All right.

THEREUPON:

[R. 99-108] ROBERT C. WOODY,

called as a witness by the plaintiff, having first been duly sworn, was examined and testified as follows:

THE CLERK: Please state your full name, address and occupation.

THE WITNESS: Robert C. Woody, Post Office Box 328, Kissimmee, Florida.

[fol. A-116] THE COURT: Where do you live?

THE WITNESS: I live at the corner of Kingshighway and Virginia Drive.

THE COURT: Where?

THE WITNESS: In Kissimmee, Florida.

THE COURT: How long have you lived there?

THE WITNESS: At that address, two years.

THE COURT: Before that where did you live?

THE WITNESS: 2502 North Beaumont in Kissimmee, Florida.

THE COURT: What is your business?

THE WITNESS: Deputy Sheriff and a jailer.

THE COURT: For how long?

THE WITNESS: Eight years.

DIRECT EXAMINATION

BY MR. MATTHEWS:

Q Were you acting in that capacity during the period of time that Chancel Carmichael was in jail?

A Yes, sir.

Q Was it a part of your duties, sir, to receive and censor the mail of the prisoners?

A Yes, sir, it was.

[fol. A-117] Q And do you recall an occasion that you received some mail from Mr. Carmichael?

A That is right.

MR. MATTHEWS: If the Court please, I would request to have these marked as a Composite Exhibit No. 10 for identification.

(The documents referred to were marked Plaintiff's Composite Exhibit No. 10 for identification.)

THE COURT: Counsel, have you seen these?
MR. LURIE: I haven't seen them, no.
THE COURT: Look at them.
MR. LURIE: Something new.
THE COURT: You can take them over and let your client look at them, if you like.
MR. LURIE: I don't want him to see anything. I am going to do this myself.

BY MR. MATTHEWS:

Q Mr. Woody, I am going to show you Composite Exhibit No. 10 and ask you if you have seen these before and can identify them.
A Yes, sir.
Q Where have you seen them before?
[fol. A-118] A This letter was given to me by Chancel Carmichael in the County—
Q Was it sealed or opened at the time?
A It was sealed.
Q Did you open it?
A Yes, in the presence of Sheriff Buckels.
Q What was contained therein?
A These two letters to the District Director of Internal Revenue in Jacksonville.
Q What did you do with this package after you opened it in the sheriff's presence?
A I turned that over to the sheriff, who I think in turn, turned it over to the Internal Revenue Service.
MR. MATTHEWS: No further questions.

CROSS EXAMINATION

BY MR. LURIE:

Q That was in 19— When?
A 1963.
Q In 1963?
A Yes, sir.
Q In one of these envelopes there is a letter dated February 5, 1960.
[fol. A-119] A I know nothing about that.
Q You said everything that was in these envelopes was turned over to the sheriff?

A That's right.
Q Is that right?
A That's right.
Q You are sure it wasn't mailed prior to 1965 or asked to be mailed prior?
A No, it was mailed in 1963, sir. It was turned over to me in 1963.
Q When did Carmichael get into the jail?
A That I can't answer. I believe it was—I am guessing.
Q Don't you have records up there?
A Yes, sir.
Q Well, did you look at your records?
A Not for Carmichael. I am not interested in Carmichael.
Q Didn't you know he was going to be here?
A No, sir, I did not.
Q How long was he there?
A He was there for a year.
Q He was there in 1963?
[fol. A-120]. A Yes, sir.
Q How long was Mathis there?
A Mathis was there from the latter part of June he was put into that jail and he was sent to Raiford in February of '65.
Q In other words, he was there from June until February waiting for trial; is that right?
A I wouldn't say he was waiting for trial.
Q Well, he wasn't sentenced at that time?
A That's right. He had an attorney appointed.
Q But he wasn't sentenced in June of '62?
A No.
Q And if he went to Raiford in February, 1963, it meant that he was tried some time in between that time, is that right?
A Yes, sir.
MR. MATTHEWS: Objection, your Honor.

BY MR. LURIE:

Q He wasn't there on a definite sentence for any crime?

THE COURT: Sustained. Forget about these sidelines.

[fol. A-121] BY MR. LURIE:

Q Was he there on any definite sentence or was he being held for trial?

MR. MATTHEWS: Objection, your Honor.

MR. LURIE: I think—It is important to our defense, Judge.

THE COURT: He say he doesn't know.

MR. LURIE: Maybe he does know.

THE WITNESS: No, sir, I don't know if he was. I know when he was put in jail. I know when he was sentenced and taken to Raiford.

BY MR. LURIE:

Q But prior to his sentencing he was in your jail?

A Right.

Q So he was waiting for trial, then?

A Well, apparently.

MR. MATTHEWS: Objection, your Honor. He is being argumentative.

THE COURT: Argumentative—may have been waiting for trial.

MR. LURIE: I don't know what else it could be.

[fol. A-122] BY MR. LURIE:

Q You don't know how this February, 1960 letter got into this thing?

A No, sir, I don't know.

Would you let me see it, please?

Q Oh, sure. You don't think I would read you something that wasn't true, do you?

A We didn't even know this gentleman in 1960.

Q There is a date on it, isn't there?

A Yes, sir.

Q What date does it contain?

A 1960, but we didn't have that gentleman in jail in 1960.

Q Do you know where these letters were prior to your receiving them today?

A With the Internal Revenue Service, I presume.

Q You presume; you don't know for sure?
A Well, I am pretty positive.
Q When did you see them last?
A When I turned them over to Sheriff Buckels.
[fol. A-123] Q And you haven't seen them since that time?
A No, sir.
Q And you can recognize these letters after three years? You haven't seen them since that time?
A Yes, sir, I can recognize them.
Q Any marks on them to show that you had them?
A No marks, no.
Q No identification?
A No, sir.
Q And you are sure?
A Other than when I opened this letter right here. I opened this letter.
Q How can you identify a letter from opening it?
A How can I? That's right, I opened it.
Q How did you open it, steam it open?
A No, sir.
Q How come it isn't torn?
A We have ways of opening letters. I mean, we censor letters.
Q You don't steam them open?
A No, sir. We have every right in the world to open [fol. A-124] these letters.
Q I didn't say you didn't have any right, sir. I am not complaining about your right. I am just complaining about my client's rights, not yours.
THE COURT: Let's don't argue about it.

BY MR. LURIE:

Q You have never seen them since 1963, there are no marks on these letters to show that these are the same letters that you saw then, yet, you identify them. Is that right?
A I can identify them, yes, sir.
THE COURT: What do you want to do with these letters? They haven't been introduced.
MR. LURIE: No more questions.
MR. MATTHEWS: Not yet, your Honor. We intend to satisfy counsel with reference to the custody chain.

No further questions.
THE COURT: Call your next witness.

[fol. A-125] THEREUPON:

[R. 109-113] ROBERT M. BUCKELS,

called as a witness by the plaintiff, having first been duly sworn, was examined and testified as follows:

THE CLERK: Please state your name, address and occupation.
THE WITNESS: Robert M. Buckels, Sheriff, Osceola County, Kissimmee, Florida.
THE COURT: How long have you been sheriff?
THE WITNESS: Since January of '68.

DIRECT EXAMINATION

BY MR. MATTHEWS:

Q Mr. Buckels, sir, did you in the course of your official duties have occasion to see Government's Exhibit 10 for identification?
A I did.
Q When, approximately, did you see them and from whom did you see them?
A The early part of February, from my jailer, R. C. Woody.
Q The gentleman that just testified?
A Yes, sir.
[fol. A-126] Q How long did you keep them in your possession?
A A day or two, maybe three days; I don't know.
Q What did you do with them?
A Turned them over to an Internal Revenue agent, Mr. Derry.
Q And when you turned them over, sir, did you take a receipt for these?
A I did.
Q Did you list what you were giving Mr. Derry on your receipt?
A He made a receipt out, yes, sir, and listed it.

MR. MATTHEWS: I have no further questions.
THE COURT: Any questions?

CROSS EXAMINATION

BY MR. LURIE:

Q When was the last time you saw those letters?
A When was the last time I saw those letters?
[fol. A-127] Q Yes.
A I saw them then.
Q Prior to today.
A I saw them in the District Attorney's office this morning or yesterday.
Q And prior to that time when was the last time?
A When I gave them to Mr. Derry.
Q And that is how long ago?
A Since February of 1963.
Q February of '62?
A Of '63.
Q What day in February?
A The 6th, I think. I can refresh my memory from a note. I have the original receipt I have from Mr. Derry.
Q When did Mr. Mathis go to Raiford, if you know?
A February the—I assume 3rd; about the 3rd.
Q You gave it to him after he went to Raiford, is that it?
A I don't know. When did he go to Raiford?
[fol. A-128] Q You said February 3rd.
A No. I gave them to Mr. Derry. He made them out February 3rd. I gave them to Mr. Derry February 6th. Here is a receipt for them.
Q You mean Mathis wrote these letters on February 3rd?
A On or about the 3rd, yes.
Q Well, your man, Mr. Woody, said Mr. Mathis went to Raiford on February 2nd. Do you know when he went?
MR. MATTHEWS: Excuse me. I am going to object to the form of the question, counsel paraphrasing testimony.
THE COURT: Sustained.

BY MR. LURIE:

Q Do you know when he went?
A I am not sure, no.
Q Do your records show when he went?
A I don't have that record with me, no.
Q Why don't you have it with you?
A I didn't think I would need it.
Q You knew you were going to testify about this man?
[fol. A-129] THE COURT: Don't argue with the witness.

BY MR. LURIE:

Q You knew what you were coming here for?
A I had an idea.
THE COURT: Not to bring his records, necessarily. He came here to testify about some letters, not when a man went—

BY MR. LURIE:

Q Did you put any marks on these envelopes to show that you had these letters in your possession?
A No, sir.
Q Until the time you saw them in the District Attorney's office, you didn't see them from the time you turned them over to the Internal Revenue officer until the day before yesterday, or whenever it was?
A Yesterday, I think it was.
MR. LURIE: No more questions.
MR. MATTHEWS: No further questions.
THE WITNESS: I wonder if I could be excused?
MR. LURIE: Yes, sir. I don't need you any more.
[fol. A-130] THE WITNESS: Mr. Woody also?
MR. MATTHEWS: Yes, sir.
Do you think this is time—
MR. LURIE: I would like, if we could, to resume about 10:30, possibly.
THE COURT: 10:30 will be all right.
How many more witnesses do you have, Mr. Matthews?
MR. MATTHEWS: I only have about three or four witnesses.
MR. LURIE: We will finish it tomorrow.

THE COURT: I think we can. We will have to work a little bit in the noon hour.

Be back at 10:30 tomorrow morning. Meanwhile, do not discues the case among yourselves or with anybody else or permit it to be discussed in your presence or hearing. Do not discuss any subject matter that pertains to the case or any persons who are engaged in this litigation in any shape or form. Keep your discussions to yourselves until you finally arrive in the jury room after hearing all the evidence and arguments of counsel.

The reason, I think, is very pertinent.

[fol. A-131] Don't listen to anybody's discussion of the case, either, or anything pertaining thereto.

Be here at 10:30 in the morning.

(Thereupon, Court was adjourned until 10:30 A. M. June 23, 1966, at which time the following proceedings were had:)

[fol. A-132]

Miami, Florida,
June 23, 1966
10:30 A. M.

THE COURT: Do you each waive the polling of the jury and consent that they are present and have been present throughout the trial, and that the defendant is present and has been present throughout the trial?

MR. MATTHEWS: The Government so waives.

MR. LURIE: So waived.

THE COURT: So agreed and stipulated.

THEREUPON:

[R. 116-120] DON D. DERRY

called as a witness by the plaintiff, having first been duly sworn, was examined and testified as follows:

THE CLERK: Please state your name, address and occupation.

THE WITNESS: Don D. Derry. I am employed as a Special Agent with the Intelligence Division of the Internal Revenue Service.

THE COURT: How long have you been so employed?

THE WITNESS: Nine and a half years, your Honor.

[fol. A-133] THE COURT: Are you acquainted with the defendant in this case?

THE WITNESS: I am acquainted with the case, your Honor.

THE COURT: With the case. All right.

DIRECT EXAMINATION

BY MR. MATTHEWS:

Q Are you acquainted with Sheriff Buckels who testified yesterday, sir?

A Yes, I am.

Q I would like to show you Government's Exhibit 10 for identification and ask you if you are acquainted with those documents in any way?

A Yes, I am.

Q Will you state the nature of your acquaintance with the documents, sir?

A On February 6, 1963, I received a telephone call from Sheriff Buckels of Osceola County.

Q And as a result of that call, what did you do?

A I made a trip to Kissimmee to Sheriff Buckels' office.

Q And upon your arrival, what happened with rela-

[fol. A-134] tion to these documents?

A Sheriff Buckels explained that he had a prisoner—

MR. LURIE: I am going to object.

THE COURT: Don't say what he said. Say what happened about the documents, if anything.

BY MR. MATTHEWS:

Q Did you see the documents on the occasion of this visit?

A Yes, I did.

Q Did you receive them from Sheriff Buckels?

A Yes, I did.

Q Did you give him a receipt for them?

A Yes, I did.

Q What did you then subsequently do with these documents?

A I retained them in my personal file, locked file, in our office in Orlando until June 4, 1965, at which time I turned them over to Special Agent Fred Schilling.

MR. MATTHEWS: No further questions.

THE COURT: Any questions?

[fol. A-135] CROSS EXAMINATION

BY MR. LURIE:

Q Did you put any markings on these to help you identify these?

A Did I place any markings on them?

Q Yes.

A No, sir.

Q The only way you can identify them is from memory, is that right?

A That is correct.

MR. LURIE: Okay. No further questions.

THE COURT: That is all.

MR. MATTHEWS: I have one further question.

REDIRECT EXAMINATION

BY MR. MATTHEWS:

Q You said that the only way you can identify these is by memory. Sir, did you make copies of these documents and retain them in your file?

A Yes, I did.

Q Did you make notations on those copies?

A Yes, I did. I wrote on the back of each of the copies some—

MR. LURIE: I am going to object unless the copies [fol. A-136] are in evidence. He is talking about something I don't know anything about.

THE COURT: Sustained.

MR. MATTHEWS: I have no further questions.

THE COURT: That is all.

MR. MATTHEWS: Mr. Schilling.

THEREUPON:

[R. 120-122] FRED SCHILLING

called as a witness by the plaintiff, having first been duly sworn, was examined and testified as follows:

THE CLERK: State your full name, address and occupation.

THE WITNESS: Fred Schilling. I am a Special Agent with the Intelligence Division, Internal Revenue Service.

DIRECT EXAMINATION

BY MR. MATTHEWS:

Q How long have you been so employed in that capacity, Mr. Schilling?

A A little over fourteen years.

Q I show you Government's Exhibit 10 for identification and ask when is the first time you saw them prior [fol. A-137] to this time.

A I was given these documents by Special Agent Don Derry on June 4, 1965.

Q Have you retained them in your custody and possession up until the time of this trial?

A I have.

MR. MATTHEWS: We would offer Government's Exhibit 10 at this time.

THE COURT: It will be admitted.

(The document referred to was marked in evidence as Plaintiff's Exhibit 10.)

MR. MATTHEWS: No further questions.

THE COURT: Any further questions?

MR. LURIE: If the Court please, before you admit these in evidence I think you ought to look at them and see whether they are germane to the issues in this case, because nobody has shown these are relevant here yet.

THE COURT: Well, counsel, why don't you keep quiet? He is not telling the jury what these exhibits are, so you might well not have them—

MR. LURIE: They are in evidence. He can tell them [fol. A-138] about it then.

THE COURT: Do you want me to look at them? I will look at them. Let me have them, Mr. Clerk.

Have you looked at them, counsel?

MR. LURIE: I looked at them.

THE COURT: This one is a Withholding Tax Statement which would be connected with this case in the sense that they involve the same subject matter and this one here apparently is the same. It is a Withholding Tax Statement and a letter to the District Director concerning a refund purportedly signed by the defendant, somebody by that same name.

This letter pertains to family matters and also to the mailing of these others, one of these other letters.

They will be admitted. They apparently deal with the matters we are concerned with here.

Next witness, please.

MR. LURIE: No further questions.

MR. MATTHEWS: Mr. Hosford.

[fol. A-139] THEREUPON:

[R. 123-128] LEE C. HOSFORD,

called as a witness by the plaintiff, having first been duly sworn, was examined and testified as follows:

THE CLERK: State your full name, address and occupation.

THE WITNESS: My name is Lee C. Hosford, District Manager, U. S. Federal Government Social Security Administration, District Office, Miami, downtown.

DIRECT EXAMINATION

BY MR. MATTHEWS:

Q Mr. Hosford, how long, sir, have you been employed with the Social Security Department?

A Twenty-six years.

Q Did you, sir, at my request, obtain and bring to me some documents of your department?

A Yes, sir.
Q And are these the documents (indicating)?
A Yes, sir.
MR. MATTHEWS: I would request that they be marked as Government's Exhibit No. 11 and I offer them in evidence. They are certified.
THE COURT: What do they purport to be?
[fol. A-140] MR. MATTHEWS: Certifications from the Department as to the identity of individuals with certain Social Security numbers which are associated with this case.
THE COURT: The defendant among them?
MR. MATTHEWS: Yes.
THE COURT: Any objection?
MR. LURIE: I think I am going to look at them.
THE COURT: It just gives the Social Security numbers of, apparently, the defendant.
MR. LURIE: There are a lot of names in here that have no bearing in this case, that I haven't seen yet in this case.
MR. MATTHEWS: They have a bearing.
MR. LURIE: Ruby Tyndal and Eugene Maurice Parrish—I haven't heard any names like that—Ruby Tyndal Crowe, Mattie Lee Henry. Until you connect them up, I don't see why they should be in here.
You can't take the Social Security numbers—
THE COURT: Wait a minute. Let us see what he has to say.
[fol. A-141] MR. LURIE: Yes.
MR. MATTHEWS: The relevancy to this case is that these numbers were used, allegedly used, by the defendant and it is our purpose to show that the Social Security numbers used were not his.
THE COURT: I see.
MR. MATTHEWS: Just numbers at random, so that is the significance of the determination of the number.
THE COURT: All right.
MR. LURIE: I am objecting.
THE COURT: They will be admitted.

(The document referred to was marked in evidence as Plaintiff's Exhibit No. 11.)

BY MR. MATTHEWS:

Q Mr. Hosford, I would show you part of Composite Exhibit 11 which is entitled, "Record of earnings" and ask, sir, if you will publish that document, that is, tell the Court and jury the meaning of it.

A This statement, sir, is a record of the earnings shown on our official record for Robert T. Mathis as to [fol. A-142] whether he had earnings during certain years.

Do you want me to read the entire—

Q Yes, sir.

A The first employer listed is the Finance Center, U. S. Army, 3/31/60. Amount earned that quarter, $786.17. Reported by Robert T. Mathis.

In other words, it is reported by the Finance Center that he earned this amount of taxable wages.

The same employer, Finance Center, U.S. Army, Indianapolis, Indiana, for the second quarter of 1960, June 30th, he earned $822.66.

The same employer, the Finance Center, U.S. Army, for the third quarter or September, 1960 quarter, he earned $544.34.

Our records show that from October 1, 1960 through December 31, 1962, he had no taxable earnings.

MR. MATTHEWS: Thank you very much. No further questions.

THE COURT: Any cross?

[fol. A-143] CROSS EXAMINATION

BY MR. LURIE:

Q You can't say that it was this defendant that you are talking about, can you?

A Sir, I am talking about Robert T. Mathis reported on our records with these Social Security numbers.

Q But you wouldn't know whether that Robert T. Mathis you are talking about is the defendant, would you?

A We have his original S.S. No. 5 signed by this gentleman—by a gentleman, Robert T. Mathis.

Q Where is it?
A Sir?
Q Where is it?
A Right here, sir.
Q By Robert T. Mathis?
A By Robert T. Mathis on whose earnings this employer reported.
Q But you are still not answering my question.
THE COURT: Do you know whether this Robert T. Mathis is the Robert Mathis?

BY MR. LURIE:

[fol. A-144] Q Is the man we are talking about, of your own knowledge, sir?
A All I know, this Robert T. Mathis, this Social Security number, our records show this for.
Q You still didn't answer me.
THE COURT: You don't know the individual, do you?
THE WITNESS: No, sir.

BY MR. LURIE:

Q You don't know whether that is the man you are talking about or not? You are talking about a Robert T. Mathis with a certain Social Security number. Right?
A That is correct.
MR. LURIE: Okay.
THE COURT: Where did that Robert T. Mathis live, if you know?
THE WITNESS: On the original application he said he lived in Florence Villa, Florida.
THE COURT: All right.
MR. LURIE: No further questions.
MR. MATTHEWS: No further questions, sir.
We have a new witness, Edwin C. Schroeder.

[fol. A-145]

[R. 129-142]

THEREUPON:

EDWIN C. SCHROEDER

called as a witness by the plaintiff, having first been duly sworn, was examined and testified as follows:

THE CLERK: State your full name, address and occupation.

THE WITNESS: Edwin C. Schroeder. I live at 2436 North Gerard, Indianapolis, Indiana.

DIRECT EXAMINATION

BY MR. MATTHEWS:

Q Your occupation?

A Examiner of questioned documents, generally termed handwriting identification expert.

Q How long has this been your profession, Mr. Schroeder?

A For the past thirty years.

Q By whom are you presently employed, sir?

A I am employed by the Intelligence Division, United States Treasury Department.

Q How long have you been so employed?

A Since March of 1962.

Q And prior to that time where were you employed?

A I was employed by the Indiana State [fol. A-146] Police.

Q What were your duties with the Indiana State Police?

A Examiner of questioned documents and commanding officer of the Questioned Documents Section of the Crime Laboratory.

Q For how long a period of time were you employed in that capacity with the Indiana State Police?

A For more than twenty-six years.

Q Now, presently, sir, what is the exact nature of the work that you do?

A I devote my entire time to the examination of problems concerning documents, that is, the identification of handwriting, hand printing, matters concerning typewriter identification, of inks and papers, alterations in documents—generally testing the authenticity in documents.

Q Generally and briefly, sir, what preparation and training have you had for this work?

A For the past thirty-two years I made a study of the various problems one would be confronted with concerning a document. I made a study of natural handwriting, disguised handwriting, simulated writing, trace writ-[fol. A-147] ing and printing. I made a study of typewriting identification and personally own quite a complete collection of different typewriting fonts and the like.

I have studied, of course, the principal textbooks on the subject and personally own a complete selection of books covering the subject of questioned documents and related subjects.

I made a study of microscopy and photography. I have at my disposal or for my use a fully equipped laboratory with various types of copy cameras, enlarging cameras, microscopes and other types of instruments necessary to conduct various types of examinations.

A great deal of my intelligence along these lines has been enhanced by being associated with members of the American Society of Questioned Document Examiners, the American Academy of Forensic Sciences.

Q Now, outside of the academic training and experience in your particular field, have you attended any special schools?

A Well, I am a graduate of the F.B.I. National Police Academy and from the International Criminologist [fol. A-148] School at Seattle, Washington; Special Police Science School at Purdue and Indiana Universities.

Q In the course of your work have you had occasion to testify in court before?

A Yes, I have testified in all courts operating, of course, in the State of Indiana and in twelve other states.

Q Is your work confined to your locale where your office is?

A No, I serve the—all of the intelligence offices of the Internal Revenue Service in the fifty states.

MR. MATTHEWS: We offer Mr. Schroeder as an expert.

BY MR. MATTHEWS:

Q Mr. Schroeder, I show you Government's Exhibits Nos. 1-A, 2-A, 1-B and 1-C, 1-D and 2-D, and also show

you Government's Exhibit No. 3, and in so doing, sir, I would invite your attention to the signatures as signed thereon, Robert T. Mathis, and ask you whether or not you have had an opportunity to make an analysis of that signature.

A Yes.

[fol. A-149] Q In so doing, did you prepare charts with reference to your examination?

A Yes.

Q Do you have that with you, sir?

A Yes.

Q Could you—

THE COURT: Counsel, you may take any position you like for the purpose of observing this.

MR. LURIE: All right, sir. I can sit right here and watch it.

THE COURT: All right. Are you ready to proceed?

MR. MATTHEWS: Yes, your Honor. I want to get some order here.

BY MR. MATTHEWS:

Q Now, Mr. Schroeder, will you tell us, sir—You have the lines numbered there, I see.

THE COURT: First, tell us what you sought to do with these several signatures that you said you saw and examined.

THE WITNESS: I examined the signatures, Robert Mathis, on Exhibit 2-A and I examined the payee endorsement, Robert T. Mathis, Sr.

[fol. A-150] THE COURT: That is on the check?

THE WITNESS: On the reverse of the check, Exhibit 3.

Then I examined the taxpayer's signature, Robert Theodore Mathis, on the Exhibit 1-A and I compared those signatures with the signatures of Robert Mathis on Exhibit 1-C, 1-D, 2-B and 1-B.

THE COURT: That is the so-called green sheets?

THE WITNESS: Yes.

THE COURT: All right.

THE WITNESS: The signatures, Robert Theodore Mathis, on each of those documents.

Now, as a result of my examination, I am of the definite opinion that the signatures of Robert T. Mathis on Exhibits—they are all written by one and the same writer.

THE COURT: All of them?

THE WITNESS: Yes. And as part of my examination, I prepared this enlargement.

Now, originally, when I examined these documents I had photostatic copies to work from, your Honor, and I made the photographic copy of the signatures on the [fol. A-151] photostats, the various exhibits, and made a negative and produced this enlargement here.

This enlargement is about twelve degrees enlargement. The scale is at the lower left side there.

My opinion is based upon a combination of individual peculiarities in the handwiting habits that in my judgment are sufficient in number and distinctive of the writer, Robert T. Mathis. It is generally accepted a person's handwriting contains peculiarities of habit which are distinctive to that individual. I have found such a combination of peculiarities in these writings.

Now, 1, 2 and 3—No. 1 is taken from the taxpayer's signature, Robert Mathis, from Exhibit 2-A. Now, No. 2, line No. 2, Robert T. Mathis, was taken from the payee endorsement on the reverse of the Government check or Exhibit No. 3-A.

Line No. 3 was taken from the Exhibit 1-A, Robert Theodore Mathis.

Now, lines 4, 5 and 6 and 7 were taken from—line 4 was taken from the Robert T. Mathis signature from Exhibit 1-B and line No. 5, the Robert T. Mathis signature was taken from Exhibit 2-B, and line 6 was taken [fol. A-152] from Exhibit 1-C, and line 7 was taken from Exhibit 1-D.

Q Will you tell us what points of comparison and similarities you found for the conclusion that you reached?

A I found similarities in the formation of the "R" in Robert. It is made somewhat unusual. It starts from the base line and goes clockwise around. Each of the "R's" have the same formation. Now, the "R" here, the line here in line 3, which is part of the questioned signature, in my judgment, perhaps a mild attempt at disguise was

done here, only that the writing, instead of being written in the forward slant is somewhat vertical and somewhat slants back toward the left, but the basic peculiarities remain in the writing.

Now, each of the "R's" here, of course, vary somewhat as the "R" here in line 4 has a large loop to it, where the "R" here in 5 does not have that. But the vasic peculiarity, the formation of it, the slant of it, its angularity, are the same, so these two "R's" will vary as much as these "R's" here will vary.

Now, this "R" here varies from this "R" for that much [fol. A-153] variation. In other words, besides the variation in the handwriting, these two, to my judgment, are the significant identifying peculiarities of this writer as to the "R".

Now, the "o's" in Robert in the first line and second line, are closed, where the "o" in the third line is looped, so it varies, and so is the "o" in line 4 looped and the "o" in line 5 is looped, but in line 6 it is closed, so we have that variation between those "o's". It varies as much as these "o's" vary here, as the "o's" do vary in lines 4, 5, 6 and 7.

The "t" in Robert, it is usually a straight staff with a cross bar at the top, disconnected occasionally. The "t" here in Robert in line 2 and the "t" here in line 5—in other words, both of the writings—the writing contained cursive writing and disconnective script, which is a habit of this writer.

The "T," this one here, the first line, does not have the "T" middle initial. There is a series of embellishments, added strokes, to the writing. You might say it is somewhat dressed up. That writer here has a wide range of variability. He can write with a plain hand [fol. A-154] which is plainly easy, and he can also write with a considerable amount of embellishment and added strokes, as he added here in "Mathis" in a wrap-around "t" and the "s" in the situation here on line 4 and in line 2.

Now, with the "s" in the third line, "Mathis," it does not have this added stroke to it, but it is a highly significant peculiarity here of this "s" that the writer discon-

nects the "s's" from the "i" occasionally. I believe—I am not too certain about this—but I believe this was a careful joining here as the terminal stroke of the "i" ended, the pen was raised from the paper, placed on again and the "s" was completed. That is obviously what happened here. The "i" was made and at the terminal stroke of the "i" there the pen was raised. It is very unusual for a writer to raise a pen at the top of the "s." It can be seen. Then the "s," the top of the "s" was placed on the top of the end of the terminal stroke of the "i" and then continued on around as these "s's" were made, this "s", as this "s" here in line 5, Mathis, and as the "s" here in line 4, because there is much more, like between these two strokes here.

[fol. A-155] Now, in comparing the capital "T" in Theodore, line 2 is more of a printed "T", so it is not comparable with the "T" here. But in line 7 the signature is written, "Robert T. Mathis"—I should say "Robert Theodore Mathis." A large loop for a "T", considerable embellishment where the "T" in line 6 in "Theodore" is more like the "T" in the "Theodore" in line 3. The formation of the letter, the first part, has a point to it, comes around to the left and terminates horizontally.

Now, the "h" in Theodore with the absence of the initial stroke as the "h" in line 6 in Theodore, as the "h" in Mathis in line 5.

Q Mr. Schroeder, let me interrupt and ask you this, sir: Are there variations with every individual in the way that he constructs a letter every time he writes? Are there some variations?

A Yes. A writer will vary his writing from one writing to the other, which is, of course, habitual. Some writers may have one or two or three different ways of forming letters. This writer does.

Q Is it the peculiarities of the combinations or the [fol. A-156] forming of letters together from which comparisons are made?

A Yes.

Q It is not that one letter is made differently that you make your determination?

A It is a combination of all these peculiarities, not by one peculiarity, but by a combination of all peculiarities.

Other writers might make an "R" this way, you see, and other writers might make the "s" this way. Other writers might make an "s"—I doubt highly—a distinctive part, the "s" here, and some writers might make an "o" with two "ee's" forming an "o" as the "o" is found down here in "Theodore."

Q Sir, is it highly likely that some other writer would have all these peculiarities in his writing?

A Yes, right, highly unlikely, highly improbable.

Q And from those peculiarities you did find the writer of 1, 2 and 3, was the writer of 4, 5, 6 and 7 on your chart?

A Yes. I pointed out some of—in my opinion, the writer that wrote 1, 2 and 3, is also the writer that wrote [fol. A-157] lines 4, 5, 6 and 7.

MR. MATTHEWS: I have no further questions.

MR. LURIE: I am not worried about the chart. You can sit down.

CROSS EXAMINATION

BY MR. LURIE:

Q When did you get these documents for examination?

A I examined the photostats with a letter dated May 26, 1966, when they were received from Special Agent Fred Schilling from our Orlando office. I had occasion to examine the original documents but a few days ago.

Q And all of your comparisons, then, were made from photostats originally?

A Originally, yes.

Q I mean the original documents you didn't see until a couple days ago, the day before yesterday?

A Yes.

Q And you didn't have a chance to more than just look at these, is that right?

A Oh, I studied them quite carefully. Even the photo- [fol. A-158] stats were good and clear.

Q You say you used Government Exhibit 1-B as a comparison. Right?

A Yes, I used this one and three other signatures.
Q And 1-A and 2-A?
A Let me see that. That is the question here?
Q Yes.
A Yes. The problem to determine whether or not the signatures here on 2-A and 3-A and the other one—

MR. LURIE: No further questions. Do you have any further questions of this man? I would like to make a motion, then, at this time, if the Court please, that all of his testimony be stricken for the following reasons: One, that the signatures on the comparison signatures that were used from 1-A and 2-A were obtained, as testified to by John R. Lawless, as having been obtained in the Raiford Penitentiary and—

THE COURT: You mean on the green sheets?

MR. LURIE: No, wait. Before the green sheets, on admissions made—

[fol. A-159] THE COURT: Before the green sheets, he wasn't in the penitentiary.

MR. LURIE: Oh, yes, he asked him first if 1-A and 2-A were his returns, that's what he testified to. And I asked him whether or not he had advised this man of his constitutional rights.

THE COURT: Oh, yes, and I ruled against you. Go ahead.

MR. LURIE: I just want to get it back into the record, Judge.

THE COURT: All right. I will deny the motion.

MR. LURIE: Let me get it all in.

And that all of this evidence that was obtained for comparison purposes outside of Government's Exhibit 3 were obtained by John R. Lawless in his visit to the defendant at Raiford Penitentiary in violation of his constitutional rights.

THE COURT: The original income tax returns were not obtained by him.

MR. LURIE: There was an admission stated.

THE COURT: I say they were not obtained by him. It is up to the jury to believe whether or not your man [fol. A-160] filed them. Maybe he did not. I don't know.

MR. LURIE: Yes, that is right, but—

THE COURT: Somebody, and of course, the check was not obtained by him.

MR. LURIE: There is another thing, too, Judge, that I have noticed, is one of these green sheets was never introduced in evidence and he used that as a comparison. 2-B was never introduced in evidence.

THE COURT: I don't know. Counsel doesn't introduce them very regularly, but did you or not?

MR. MATTHEWS: Yes.

MR. LURIE: 2-B wasn't. This was the one obtained by McConnell.

MR. MATTHEWS: Mr. McDaniel introduced it in evidence.

THE COURT: I think so.

MR. LURIE: You withheld—

THE COURT: Did you mark it, Mr. Clerk?

THE CLERK: Yes. You said it was received, so it was received.

MR. LURIE: That was my understanding. If I am wrong—I am sorry if I was wrong.

I am making objection to his testimony for all of those [fol. A-161] reasons.

THE COURT: All right, it will be noted. Anything further?

MR. MATTHEWS: No further questions.

THE COURT: You may come down, sir.

MR. MATTHEWS: The Government rests, your Honor.

THE COURT: The Government rests. The defense will proceed.

MR. LURIE: I would like to make a motion.

THE COURT: All right. Lady and gentlemen of the jury, you might as well walk around a moment or two. Walk through this door here and make yourselves comfortable in those offices.

(Thereupon the jury retired from the courtroom and the following proceedings were had:)

MR. LURIE: Judge, prior to saying anything about a motion for judgment of acquittal, I just want to make sure that this point is preserved with reference to these

documents that were introduced through John R. Lawless and the admissions that were made to John R. Lawless while he was in Raiford without first informing the de-
[fol. A-162] fendant of his constitutional rights.

THE COURT: He wouldn't talk to him when he got to Raiford.

MR. LURIE: No, no, I mean—I am talking about beforehand, Judge, after he was—when they came the second time.

THE COURT: Well, it is preserved and I have ruled against you.

MR. LURIE: And I am asking now that the record show that I am objecting to the introduction of all of these—the following exhibits: 1, 2, 3, 4, 5, 6—no. 1-A, 2-A, 1-B, 2-B, 1-C, 1-D and No. 3 on the ground that that evidence was obtained in violation of his rights.

THE COURT: That has been done and I have ruled against you and you have your exception.

MR. LURIE: As far as my motion for judgment of acquittal, the Court has heard the evidence.

THE COURT: Same thing, same ruling. Denied.

MR. LURIE: The defense rests.

THE COURT: The defense rests. All right.

Do you have any instructions, any special instructions?

MR. LURIE: No special instructions, Judge.

[fol. A-163] THE COURT: I will give the ordinary, run-of-the-mill instructions.

MR. MATTHEWS: Your Honor, I was going to have one. I don't think it is special, but I want to call it to the Court's attention, an instruction to the effect that it is not necessary that anything actually be obtained under this offense.

THE COURT: What do you want to do that for? He did get it.

MR. LURIE: They have a cancelled check.

MR. MATTHEWS: There are two counts: one for the year of 1960 in which he obtained a refund, and the other year—

THE COURT: I will give that instruction.

MR. MATTHEWS: Thank you.

THE COURT: How long do you want to talk to the jury, gentlemen?

MR. MATTHEWS: Twenty minutes.

THE COURT: Twenty minutes will be enough. We will take about a five minute recess.

(Thereupon a short recess was taken, after which the following proceedings were had, in the presence of the jury.)

[fol. A-164] THE COURT: Now, lady and gentlemen of the jury, the defense has rested as well as the Government, and at this time it is the privilege of counsel for the Government and counsel for the defendant to sum up by way of argument their conclusions as to what your verdict should be.

In so doing, they are not testifying. What they say is not testimony, of course. It is argument. But they are both skilled in the law and, no doubt, they will be able to highlight the testimony, the important parts, and to point out the various features of it, and in that way assist you in pinpointing the important factors that will be needed in making your conclusion as to the verdict.

The fact that the defendant did not offer any testimony is not to be taken against him, of course. That is his right. He has a right, if he sees fit, to contend that the Government's testimony is insufficient and rests on that, which apparently, is probably what is in his mind.

So with that in mind, Mr. Matthews, you may proceed and address the jury at the opening of your final argument.

MR. MATTHEWS: Thank you, your Honor.

[fol. A-165] AFTERNOON SESSION

Miami, Florida,
June 23, 1966
2:00 P. M.

THE COURT: Counsel, did you see the form of verdict? It is the usual form.

MR. LURIE: Yes, Judge.

THE COURT: Do you each waive the polling of the jury, consent they are present and have been present throughout the trial and the defendant is present and has been present throughout the trial?

MR. MATTHEWS: The Government so waives.

MR. LURIE: The defendant stipulates and waives.

THE COURT: Let it so appear.

Members of the jury, you have heard the evidence and the arguments of counsel, and the time has come to instruct you as to the law that you are to apply to the evidence in arriving at your verdict.

Although you are the sole judges of the facts, you are duty-bound to follow the law as stated in the instructions of the Court and to apply the law so given to the facts as you find them from the evidence before you.

[fol. A-166] You are not to single out any one instruction alone as stating the law, but you must consider them as a whole and apply the instructions as a whole to the facts in arriving at your verdict.

You are not to be concerned with the wisdom of any rule of law. Regardless of any opinion that you may personally have as to what the law ought to be, it would be a violation of your sworn duty to base a verdict upon any other view of the law than that given to you in the instructions of the Court.

You may rest assured that the law is the development of the centuries and the generations and it rests upon sound foundation, so don't try to re-make it just because you may conceive you know a better rule.

You have been chosen and sworn as jurors in this case to try the issues of fact presented by the allegations of

the indictment and the denial made by the not guilty plea of the accused. That denial denies every essential element of the charge and requires the Government to prove every essential element beyond a reasonable doubt.

You are to perform your duty without bias or prejudice as to any party. The law does not permit jurors to [fol. A-167] be governed by sympathy, prejudice or public opinion. The accused and the public both expect that you will carefully and impartially consider all the evidence, follow the law as stated by the Court, and reach a just verdict regardless of the consequences.

The law presumes a defendant to be innocent of crime. Thus, a defendant, although accused, begins the trial with a clean slate—with no evidence against him. And the law permits nothing but legal evidence presented before the jury to be considered in support of any charge against the accused. So the presumption of innocence alone is sufficient to acquit a defendant unless the jurors are satisfied beyond a reasonable doubt of the defendant's guilt from all the evidence in the case. That means unless you are satisfied beyond a reasonable doubt that a charge has been established, then you shall acquit him. So the presumption of innocence alone is sufficient to acquit a defendant unless the jurors are satisfied beyond a reasonable doubt of the defendant's guilt from all the evidence in the case.

A reasonable doubt is a fair doubt based upon reason and common sense and arising from the state of the evidence. It is rarely possible to prove anything to an abso- [fol. A-168] lute certainty, but proof beyond a reasonable doubt is required.

Proof beyond a reasonable doubt is established if the evidence is sufficient as you would be willing to rely and act upon it in the most important of your own affairs. A defendant is not to be convicted upon mere suspicion or conjecture, but must be convicted, if he is convicted, upon proof of his guilt beyond a reasonable doubt.

A reasonable doubt may arise not only from the evidence produced, but also from a lack of evidence, if there be any lack of evidence. Since the burden is upon the prosecution to prove the accused guilty beyond a reason-

able doubt of every essential element of the crime charged, a defendant has a right to rely upon the failure of the prosecution to establish such proof, if, indeed, there be any such failure.

A defendant may also rely upon evidence brought out on cross examination of witnesses for the prosecution, if that cross examination raises any reasonable doubt in your mind as to his guilt. The law does not impose upon the defendant the duty of producing any evidence and nothing is to be taken against him, as I have stated be- [fol. A-169] fore, because he did not produce any evidence in this case. That is his privilege. He may rely, if he sees fit so to do, upon the weakness of the case or circumstances which he thinks have not been established which would be required to establish his guilt.

A reasonable doubt exists in any case when, after careful and impartial consideration of all the evidence, the jurors do not feel convinced to a moral certainty that a defendant is guilty of the charge. But if, after a careful and impartial consideration of all the evidence, you and each of you do feel convinced to a moral certainty that this defendant is guilty of the charge under consideration, then, of course, reasonable doubt would no longer exist.

An indictment is but a formal method of accusing a defendant of a crime. It is not evidence of any kind against the accused and does not create any presumption or permit any inference of guilt. It is merely a means of bringing him into Court, that is all it amounts to, and to present the Government's theory of the case so that you may decide from the evidence as to whether or not the Government has sustained these charges beyond a reasonable doubt.

There are two types of evidence from which a jury [fol. A-170] may properly find the defendant guilty or not guilty of an offense. One is direct evidence—such as the testimony of an eye witness. The other is circumstantial evidence—the proof of a chain of circumstances pointing to the commission or non-commission of the offense.

As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires

that before convicting a defendant, the jury be satisfied of a defendant's guilt beyond a reasonable doubt from all the evidence in the case.

Statements and arguments of counsel are not evidence in the case. Statements of the Court are not evidence in the case.

The evidence in the case consists of the sworn testimony of the witnesses, all exhibits which have been received in evidence, and all facts which have been admitted or stipulated, if any.

Any evidence to which an objection was sustained and any evidence ordered stricken by the Court must be entirely disregarded by you. You are to consider only the evidence in the case; but in your consideration of the evidence you are not limited to the bald statements of the [fol. A-171] witnesses. On the contrary, you are permitted to draw from the facts which you find have been proved, such reasonable inferences as seem justified in the light of your own experience.

An inference is a deduction or conclusion which reason and common sense lead the jury to draw from the facts which have been proved.

I have mentioned to you that the evidence consists of the testimony of the witnesses and all exhibits. Now, the exhibits are here and you know what they are and you may have them in the jury room, all of them or part of them, as you desire. Merely ask the marshal to bring them in if you desire any of them.

The law does not require a defendant in custody to make any reply to any accusatory statement or any question addressed to him relative to any circumstances which may be embraced in the charge. So neither the statement made to him, if any, nor the failure to make a reply thereto is evidence of any kind against the accused, or his failure to answer any questions is not evidence. It is not to be taken against him if, in fact, he did fail to answer any questions. And I believe in one case, in the one instance, a witness stated that he did fail to answer a question or he did express a desire not to answer any ques- [fol. A-172] tions.

You as jurors are the sole judges of the credibility of the witnesses and the weight their testimony severally

deserves. A witness is presumed to speak the truth, but if you indulge in this presumption this presumption may be outweighed by the manner in which the witness testifies, by the character of the testimony given, or by contradictory evidence. You should carefully scrutinize the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to indicate whether or not the witness is worthy of belief.

Consider each witness's intelligence, motive and state of mind and demeanor and manner while on the stand. Consider also any relation each witness may bear to either side of the case; the manner in which each witness might be affected by the verdict, if they would so be; and the extent to which, if at all, each witness is either supported to contradicted by other evidence.

Inconsistencies or discrepancies in the testimony of a witness or between the testimony of different witnesses may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or a [fol. A-173] transaction may see or hear it differently; and innocent misrecollection, like failure of recollection, is not an uncommon experience.

In weighing the effect of a discrepancy, if one exists, consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or wilful falsehood. If you find the presumption of truthfulness to be outweighed as to any witness, you will give the testimony of that witness such credibility as you think it may deserve.

What I have said about witnesses goes to expert witnesses like the handwriting expert, and you may weigh his testimony in the same manner, weigh his credibility and weigh his competency in making any determination as to the weight, if any, to be accorded his testimony in this particular case.

Expert witnesses are people trained in a certain field who become experts and on that basis they are permitted to testify as to their opinions, but that testimony, again, is to be weighed just like the testimony of all other witnesses. But that testimony, again, is to be weighed just like the testimony of all other witnesses.

[fol. A-174] Now, this particular man, as I have told you before, is accused in two counts, both of them under the same section. One, is that in March, 1961, he did knowingly and wilfully present to the District Director of Internal Revenue, Jacksonsville, Florida, a false claim in the sum of $885.60 against the United States for a tax refund for the year 1960 and that he then and there knew the claim to be false, fictitious and fraudulent, in that it was based upon a false and fictitious income tax return filed by him in violation of Title 18, United States Code, and so forth.

Now, the essential element of that charge is that he did knowingly and wilfully present to the District Director a false claim, which false claim was in the nature of a tax return which he had filed for the year 1960 which is before you, and that is labeled "False and fictitious."

We all know what the word "false" means and "ficititious" means—it had no basis; it was fraudulent and false.

The important words are "knowingly and wilfully." The purpose of adding the word "knowingly" was to insure that no one would be convicted for an act done because of mistake or inadvertence or other innocent [fol. A-175] reasons.

As stated before, with respect to offenses such as charged in this case, specific intent must be proved before there can be a conviction.

You will note that these charges are based upon intent to defraud, to deceive the United States and get back money which the man was not entitled to, which he had claimed that he had paid in income tax over and above what he owed, and that he was entitled to a refund.

The United States says he did not pay that income tax and he was not entitled to the refund, and you have heard the testimony on those scores.

Intent to defraud means to act knowingly and with the specific intent to deceive or cheat for the purpose of either causing some financial loss to another or bringing about financial gain to one's self.

Now, count two deals with, on or about January 23, 1962, in Winter Haven, Mathis did knowingly and wil-

fully present to the District Director of the Internal Revenue, Jacksonville, Florida, then in the Southern District of Florida, a false claim in the amount of $931.20, for an income tax refund for the year 1961, and that he then [fol. A-176] and there knew the claim to be false, fictitious and fraudulent. The same claim, except for another year in another amount.

Now, it makes no difference how much money is received. I think the evidence indicates somebody received the money in one year and didn't receive it in the other. The crime, if any, is committed when you make a false and fictitious claim with intent to defraud.

Have I overlooked any instruction, gentlemen, that you desire to discuss?

MR. LURIE: Not that I know of.

THE COURT: Do you desire to add anything or discuss anything?

MR. MATTHEWS: No, your Honor, I have no additional charges.

THE COURT: Now, a form of verdict has been prepared. It is perfectly plain and clear, and when you arrive at a verdict you will fill in the blanks, the appropriate blanks; as to count one, the words either "guilty" or "not guilty;" as to count two, the words either "guilty" or "not guilty" as the case may be.

When you retire, the first think you do is select one of [fol. A-177] your members to be foreman of the jury and that foreman will deal with me in all matters that need be dealt with up until the time your verdict is received and filed, if it is received and filed.

When you arrive at a verdict, instruct him to fill in the blanks as you determine they should be, and to date the verdict and sign the verdict and return it to the Court.

Now, remember what I said about the exhibits—they are available to you in whole or in part any time.

The alternate now will be excused. The rest of you will follow the marshal into the jury room.

(Thereupon, the jury retired to the jury room at 2:23 P. M. and at 3:10 returned to the courtroom at which time the following proceedings were had:)

THE COURT: Gentlemen and lady, have you arrived at a verdict?

THE FOREMAN: We have, your Honor.

THE COURT: Hand the verdict to the clerk, please. Mr. Clerk, read and publish the verdict.

[fol. A-178] THE CLERK: Lady and gentlemen of the jury, please stand and harken to your verdict.

"United States District Court, Southern District of Florida. Case No. 65-513-Cr-EC. United States of America vs. Robert T. Mathis, Sr.

"Verdict, June 23, 1966, Miami, Florida.

"We, the jury, find the defendant, Robert T. Mathis Sr. guilty as to count one; guilty as to count two, as charged in the indictment.

"So say we all."

Signed Edward D. Reid, Foreman.

THE COURT: Do you desire the jury to be polled?

MR. LURIE: I will waive the polling.

THE COURT: All right. Mr. Clerk, receive and file the verdict.

(Thereupon, the jury was discharged and left the courtroom, and the following proceedings were had:)

THE COURT: Come forward, Mr. Robert T. Mathis. Robert T. Mathis, do you have anything to say before sentence is pronounced against you?

THE DEFENDANT: Yes, sir, I do, your Honor, sir. [fol. A-179] I would like to say, your Honor, under the Federal Rules of Criminal Procedure, I would like to request a stay of execution of sentence until all appellate remedies have been exhausted.

Next, your Honor, sir, I have a wife, six children, I have two married daughters, I have four grandchildren I have not seen. I have not seen my wife in approximately four years, and we are trying to maintain our marriage.

Also, I haven't seen my father, who happens to be eighty-seven, and in very poor health, and I received a letter last night that he is doing very bad, and my mother is very old, and if it is possible, sir, I would appreciate it if you would be very lenient with your sentence.

MR. LURIE: May I ask him a question? How long have you got to go on your sentence now at Raiford?

THE DEFENDANT: Approximately eight or nine months in Florida State prison, sir.

MR. LURIE: I mean, is that with any time off, or is that the full time?

THE DEFENDANT: That is not the full time. It is with some time off.

[fol. A-180] THE COURT: He has six months to five under a check charge, is that right?

THE DEFENDANT: Correct, your Honor.

THE COURT: Under that, he gets released within a certain definite period if he behaves. That's the way I think they work it.

Do you have anything to say, Mr. Mathews?

MR. MATTHEWS: No, your Honor, we have nothing.

MR. LURIE: Judge, I don't know, this man has a lot of good qualities, good mind.

THE COURT: He is as sharp as he can be. The trouble is he can't keep his mind working the right way.

MR. LURIE: Put it to good use. I feel this way about it, Judge. If it were possible for your Honor to consider that he has nine more months to go, if, after he gets through with that time he could be placed on a period of probation for a period of time that will be long enough to see whether or not he could behave himself, and during this period of time you require him to make restitution of this money, it might be something that might straighten him out.

THE COURT: Do you know anything about

[fol. A-181] him?

MR. ROBSON: I believe he is in violation of probation up in Federal Court in North Carolina. I have a file that came in on him and—

THE COURT: Let me see it.

MR. ROBSON: I have it, sir. I will have to go up and get it. I came off in a hurry.

THE COURT: You have probation up there, too?

THE DEFENDANT: Yes, sir, but the case is pending, review in the United States Court of Appeals in the Fourth Circuit and the decision should be down this month or next month.

MR. ROBSON: He was on probation when he got in trouble with the state in Raleigh, North Carolina.

THE COURT: There is not much I can do for him. I am sorry, because he has a good mind, I understand.

THE DEFENDANT: Your Honor, may I say something else?

THE COURT: Yes.

THE DEFENDANT: I would request you grant the stay of execution of sentence pending all appellate reme-
[fol. A-182] dies, until they are exhausted.

THE COURT: I can do that under the new procedure. I can put you out on bond, but that you will have to make a separate application for if you see fit so to do after you appeal.

THE DEFENDANT: Well, if an appeal is taken and I appeal in forma pauperis, then I would have to be in custody of the United States Marshal. Is that true?

THE COURT: That is true, unless I enlarge you on bond, which I can do later on, if I see fit to so do.

THE DEFENDANT: I have one other thing to do. I would like to file these papers with you in open court.

THE COURT: All right.

THE DEFENDANT: Which I will prepare some more papers next week. It has nothing to do with this case.

THE COURT: Some other case?

THE DEFENDANT: But I believe you have the authority, sir, to enter an order, stay of me being transported, either returning to Florida State Prison pending the circumstances of those papers.

[fol. A-183] THE COURT: Well, these will have to be filed with the clerk.

Mr. Clerk, you file them and they go to whatever judge they fall before.

THE CLERK: Yes, sir.

THE COURT: Robert T. Mathis, you having been found guilty by a jury of the charges contained in counts one and two of the indictment filed in case No. 65-513-Cr., the Court adjudges you guilty of each of said charges, based upon that verdict, and it is the judgment of the Court and sentence of law that you be remanded to the

custody of the Attorney General of the United States or his authorized representative to be imprisoned in a penal institution of the United States for the full term and period of 30 months under each of said charges, or until you have been discharged in due course of law.

The sentences are to run concurrently, one with the other.

MR. MATTHEWS: Excuse me, your Honor, your sentence is not concurrent with the state sentence he is presently serving?

THE COURT: No, I have no power. I would like to do it and tried to do it, but I can't do it.

[fol. A-184] CERTIFICATE

STATE OF FLORIDA)
) SS
COUNTY OF DADE)

I, Rudy E. Fox, Official Court Reporter, do hereby certify that the foregoing transcript, pages 1 to 181, is a true and correct transcription of my shorthand notes as taken by me at the trial in the above entitled cause at the time and place aforesaid.

DATED at Miami, Florida, this 29th day of July, 1966.

/s/ Rudy E. Fox
Official Court Reporter

[fol. A-185]

GOVERNMENT'S EXHIBIT 1-A

MATHIS ROB 593431712O5 D-827 [illegible]88560

1040A **U. S. INDIVIDUAL INCOME TAX RETURN** (Less than $10,000 tot[illegible]) 827 1968

1. Name (If a joint return of husband and wife, use first names and middle initials of both)
Robert Theodore MATHIS SR.

2. Your Social Security Number: 265 | 31 | 2431 — Wife's Social Security Number

Home address (Number and street or rural route)
244 PALMETTO AVENUE, N.E.,

City, town, or post office — Zone — State
WINTER HAVEN. FLORIDA

3. Do you owe any Federal tax for years before 1968? ☐ Yes ☒ No. If "Yes," enter the Internal Revenue District where the account is outstanding

4. If married, is your wife (husband) filing separately? ☐ Yes ☐ No. If "Yes," write her (his) name. Deceased

SHOWN ON FORMS W-2 AND OTHER INCOME		FEDERAL INCOME TAX WITHHELD	
	$ 4,800 00	$ 885	60
Yours			
Wife's			
INCOME →	$ 4,800 00	$ 885	60
ax from Tax Table or from tax computation schedule →		-0- 773	00
10 is larger than item 7, enter balance due →			
7 is larger than item 10, enter refund →		885	60

7. Total Federal income tax withheld

EMPLOYER'S NAME. Where employed. Write (W) before name of each of wife's employers
P. W. JOHNSON CONSTRUCTION Co
NEWARK 5, NEW JERSEY

8. If you had an expense allowance or charged expenses to your employer, see instruction 8 and check here ☐ if appropriate

Enclose Forms W-2, Copy B. If your income was $5,000 or more, you must compute your tax. However, if your income was less than $5,000, you may have the Internal Revenue Service compute your tax by omitting items 10, 11, and 12. If you compute your own tax, pay balance (item 11) in full with return to your District Director.

Please do not bend, pin or tear this card

ASURY DEPARTMENT • INTERNAL REVENUE SERVICE (OVER)

LIST YOUR EXEMPTIONS AND SIGN ON OTHER SIDE.

EMPTIONS FOR YOURSELF AND WIFE

ck blocks which apply. Check for wife y if all of her income is included in this urn, or if she had no income.

(a) Regular $600 exemption	☑ Yourself	☐ Wife	Enter number of exemptions checked →	1
(b) Additional $600 exemption if 65 or over at end of 1968	☐ Yourself	☐ Wife		
(c) Additional $600 exemption if blind at end of 1968	☐ Yourself	☐ Wife		

EMPTIONS FOR YOUR CHILDREN AND OTHER DEPENDENTS (List below)

NAME (Enter figure 1 in the last column to right for each name listed. Give address if different from yours)	Relationship	ANSWER ONLY FOR DEPENDENTS OTHER THAN YOUR CHILDREN: Months lived in your home. If born or died during year also write "B" or "D"	Did dependent have gross income of $600 or more?	Amount YOU furnished for dependent's support. If 100% write "ALL"	Amount furnished by OTHERS including dependent. See instruction 10	
[illegible] SEARAN MATHIS	SON					1
LAURA Belle MATHIS	DAU			$	$	1
JULIA JANE "	DAU					1
ROBERT T " III	SON					1
JOHN C "	SON					1
HARRY J "	SON					1
JESSIE L "	DAU					1

Enter total number of exemptions listed in items 13 and 14 above → 7

I declare under the penalties of perjury that to the best of my knowledge and belief this is a true, correct, and complete return.

Robert Theodore Mathis 31 Mar 69
(Your signature) (Date) (If filing a joint return, wife's signature) (Date)

● If this is a joint return, BOTH HUSBAND AND WIFE MUST SIGN even if only one had income.

[fol. A-186]

GOVERNMENT'S EXHIBIT 2-A

5954 015 457 2902 m/o Bal due 142.80 att. 1

Form 1040A **U. S. INDIVIDUAL INCOME TAX RETURN (Less than $10,000 total income)** **1961**

Please print

1. Name (If a joint return of husband and wife, use first names and middle initials of both): ROBERT T. MATHIS
Home address (Number and street or rural route): 1710 BROKEY COURT, NE
City, town, or post office: WINTER HAVEN Zone: State: FLORIDA

2. Your Social Security Number: 265 | 32 | 1464
3. Wife's Social Security Number: 264 | 34 | 2310

4. Check one:
☐ Single; ☐ Married filing joint return;
☑ Married filing separate return—
Name of wife (husband): MATTIE LEE MATHIS

57

5. WAGES SHOWN ON FORMS W-2 AND OTHER INCOME	FEDERAL INCOME TAX WITHHELD	EMPLOYER'S NAME. Where employed. Write (W) before name of each of wife's employers
If item 5 is $10,000 or more, or if item 6 is over $200, use Form 1040. $9,600 00 ✓	$931 20 ✓	JOHNSON CONSTRUCTION COMPANY, NEWARK, NJ
6. INTEREST, DIVIDENDS, AND OTHER WAGES: Yours / Wife's	7. Total Federal income tax withheld	8. If you had an expense allowance or charged expenses to your employer, see instruction 8 and check here ☐ if appropriate.
9. TOTAL INCOME → $9,600 00	$931 20	Enclose Forms W-2, Copy B. If your income was $5,000 or more, you must compute your tax. However, if your income was less than $5,000, you may have the Internal Revenue Service compute your tax by omitting items 10, 11, and 12. If you compute your own tax, pay balance (item 11) in full with return to your District Director.
10. Enter tax from Tax Table or from tax computation [illegible]	00 $931 20	
11. If item 10 is larger than item 7, enter balance due →	142 80	
12. If item 7 is larger than item 10, enter refund →	$ ~~931 20~~	

Please do not bend, pin or tear this card

U.S. TREASURY DEPARTMENT • INTERNAL REVENUE SERVICE (OVER) LIST YOUR EXEMPTIONS AND SIGN ON OTHER SIDE.

13. EXEMPTIONS FOR YOURSELF—AND WIFE (only if all her income is included in this return, or she had no income)

Check blocks which apply.
(a) Regular $600 exemption ☑ Yourself ☐ Wife
(b) Additional $600 exemption if 65 or over at end of 1961 ☐ Yourself ☐ Wife
(c) Additional $600 exemption if blind at end of 1961 ☐ Yourself ☐ Wife
Enter number of exemptions checked → ×1 1

14. EXEMPTIONS FOR YOUR CHILDREN AND OTHER DEPENDENTS (List below)

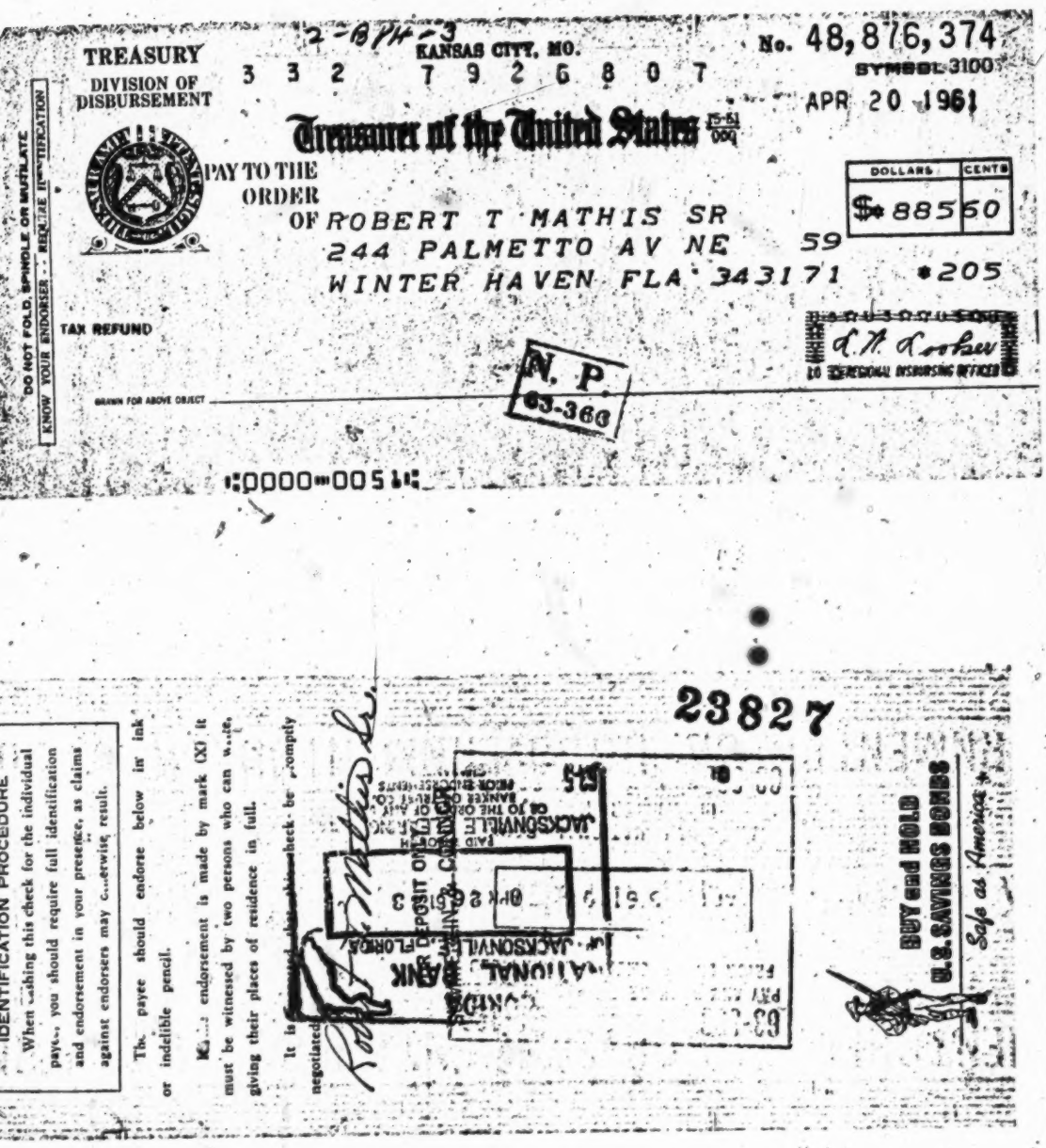
NAME ▶ Enter figure 1 in the last column to right for each name listed (Give address if different from yours)	Relationship	ANSWER ONLY FOR DEPENDENTS OTHER THAN YOUR CHILDREN: Months lived in your home. If born or died during year also write "B" or "D"	Did dependent have income of $600 or more?	Amount YOU furnished for dependent's support. If 100% write "ALL"	Amount furnished by OTHERS including dependent. See instruction 14	
PATRICIA CARCI	S-DAU			$	$	→ 1
MARY YVONNE	DAU					→ 1
ROBERT T. JR	SON					→ 1
HOWARD A	SON					→ 1
REGINALD	SON					→ 1
REGINA	DAU					→ 1

15. Total exemptions from items 13 and 14 above → 7

SIGN HERE → I declare under the penalties of perjury that to the best of my knowledge and belief this is a true, correct, and complete return.
Robert T. Mathis (Your signature) JAN 23 1962 (Date) (If joint return, wife's signature) (Date)
● If joint return, BOTH HUSBAND AND WIFE MUST SIGN even if only one had income.

[fol. A-187]

GOVERNMENT'S EXHIBIT 3



[fol. A-188]

GOVERNMENT'S EXHIBIT 1-B

FORM 872 (Rev. 6-59)

U. S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE

CONSENT FIXING PERIOD OF LIMITATION UPON ASSESSMENT OF INCOME AND PROFITS TAX

To be executed in triplicate

IN REPLY REFER TO:

In pursuance of the provisions of existing Internal Revenue laws, Robert [illegible] Mathis, Sr.

(Taxpayer's name)

RECEIVED
APR 1964
INTERNAL REVENUE SERVICE
JACKSONVILLE, FLA.

244 Palmetto Ave. N.E. Winter Haven, Florida

(Number, street, city, State)

the taxpayer, and the Commissioner of Internal Revenue, or Assistant Commissioner (Appellate), hereby consent and agree as follows:

(1) The amount of any income, excess profits, or war profits taxes due under the above-stated internal revenue law or laws from the above-named taxpayer (or taxpayers) for the taxable year ended 12/31/60

and for the taxable years ended 12/31/64 (Date) except

that if a notice of deficiency in income, excess profits, or war profits taxes for such taxable year (or years) is sent to the above-named taxpayer (or taxpayers) by certified mail or registered mail on or before the day (hereinafter called the "extended date") which is 60 days before the expiration of the period of limitation for assessment of such taxes (or any of them) as set forth in existing law or laws, then the time for making any assessment in respect of such taxable year (or years) shall be extended beyond the date otherwise fixed by the existing law or laws until the expiration of 60 days after the extended date.

(2) The amount of any such taxes may be assessed at any time prior to the date fixed by this consent. Any such assessment may be made after the filing of a claim for refund or credit, and any such claim for refund or credit may be filed at any time prior to the date fixed by this consent. Any such claim for refund or credit filed after the execution of this consent may be disallowed by the Commissioner of Internal Revenue, or Assistant Commissioner (Appellate), at any time prior to the date fixed by this consent.

(3) This consent is executed as an extension of previous consents executed by the taxpayer on 3/31/64 (Date)

Robert [illegible] Mathis [SEAL]

(Signature)

(Signature)

(Title)

(Date)

LAURIE W. TOMLINSON
District Director of Internal Revenue
Assistant Regional Commissioner-Appellate

[illegible]

CHIEF, APPEALS STAFF

(Title)

APR 3 1964

(Date)

---

(1) This consent may be executed by the taxpayer's attorney or agent provided a proper power of attorney, if not previously filed, is submitted with the consent.

(2) If executed with respect to a year for which a JOINT RETURN (Form 1040A) WAS FILED AND will was filed, this consent must be signed by both spouses unless one spouse is acting under a power of attorney, in which case a copy of the power of attorney must be attached to the consent.

(3) If this consent form is executed by a person acting in a fiduciary capacity, such as executor, administrator, or trustee, such person must submit proof of his authority to the District Director of Internal Revenue or Assistant Regional Commissioner (Appellate), unless such proof has been previously furnished, by attaching a "statement of fiduciary relationship," together with certified copy of letters of administration, letters testamentary, trust instruments, or court certificate.

(4) If this consent is executed on behalf of a corporation, it should be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition to which the seal of the corporation must be affixed. Where the corporation has no seal, the consent must be accompanied by a certified copy of the resolution passed by the board of directors, giving the officer authority to sign the consent.

GOVERNMENT PRINTING OFFICE (16-69000-1)

FORM 872 (Rev. 6-59)

GOVERNMENT'S EXHIBIT 14

FORM 872 (REV. 9-59)

U. S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE

CONSENT FIXING PERIOD OF LIMITATION UPON ASSESSMENT OF INCOME AND PROFITS TAX

OC

To be executed in duplicate

IN REPLY REFER TO: AUDIT 411-1-1 JACKSONVILLE, FLORIDA

REC'D. DIRECTOR INTERNAL REVENUE OCT 30 1964

FIELD AUDIT 411-1-1 JACKSONVILLE, FLORIDA

In pursuance of the provisions of existing Internal Revenue Laws, Robert Theodore Mathis, Sr. a taxpayer (or taxpayers) of 244 Palmetto Avenue, N. E. (Street address), Winter Haven (City), Florida (State), and the District Director of Internal Revenue (or Assistant Regional Commissioner-Appellate) hereby consent and agree as follows:

That the amount of any income, excess-profits, or war-profits taxes due under any return (or returns) made by or on behalf of the above-named taxpayer (or taxpayers) for the taxable year ended December 31, 1960, under existing acts, or under prior revenue acts, may be assessed at any time on or before June 30, 1965 (Date), except that if a notice of a deficiency in tax is sent to said taxpayer (or taxpayers) by certified mail or registered mail on or before said date, then the time for making any assessment as aforesaid shall be extended beyond the said date by the number of days during which the making of an assessment is prohibited and for sixty days thereafter.

Robert Theodore Mathis Sr. 10/30/64
(Signature) 1/ (Date)

[SEAL] 2/

(Signature) 1/ (Date)

By (Signature) (Title) (Date)

LAURIE W. TOMLINSON
District Director of Internal Revenue
Assistant Regional Commissioner-Appellate

By D. W. Stewart CHIEF, REVIEW STAFF NOV 5 1964
(Title) (Date)

1/ This consent may be executed by the taxpayer's attorney or agent, provided such action is specifically authorized by a power of attorney, which, if not previously filed, must accompany the consent.

If executed with respect to a year for which a JOINT RETURN OF A HUSBAND AND WIFE was filed, this consent must be signed by both spouses unless one spouse, acting under a power of attorney, signs as agent for the other.

If a consent form is executed by a person acting in a fiduciary capacity, such as executor, administrator, or trustee, such person must submit Form 56, "Notice to the District Director of Internal Revenue of Fiduciary Relationship," together with certified copy of letters of administration, letters testamentary, trust instruments, or court certificate.

2/ If this consent is executed on behalf of a corporation, it shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition to which the seal of the corporation must be affixed. Where the corporation has no seal, the consent must be accompanied by a certified copy of the resolution passed by the board of directors, giving the officer authority to sign the consent.

M11-J1-JRL

FORM 872 (REV. 6-63)

U. S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE

CONSENT FIXING PERIOD OF LIMITATION UPON ASSESSMENT OF INCOME AND PROFITS TAX

To be executed in triplicate

IN REPLY REFER TO:

MAR 2 - 1965

FIELD AUDIT ACTIVITY
JACKSONVILLE, FLORIDA

In pursuance of the provisions of existing Internal Revenue Laws, Robert Theodore Mathis, Sr., a taxpayer (or taxpayers) of 244 Palmetto Avenue, N.E., (Street address) Winter Haven, (City) Florida (State), and the District Director of Internal Revenue (or Assistant Regional Commissioner-Appellate) hereby consent and agree as follows:

That the amount of any income, excess-profits, or war-profits taxes due under any return (or returns) made by or on behalf of the above-named taxpayer (or taxpayers) for the taxable year ended December 31, 1960, under existing acts, or under prior revenue acts, may be assessed at any time on or before December 31, 1965 (Date), except that if a notice of a deficiency in tax is sent to said taxpayer (or taxpayers) by certified mail or registered mail on or before said date, then the time for making any assessment as aforesaid shall be extended beyond the said date by the number of days during which the making of an assessment is prohibited and for sixty days thereafter.

Robert Theodore Mathis Sr. JKC
(Signature) 1/ (Date)

[SEAL] 2/

(Signature) 1/ (Date)

By (Signature) (Title) (Date)

LAURIE W. TOMLINSON
District Director of Internal Revenue
Assistant Regional Commissioner-Appellate

By Earl M. Drummond Group Supervisor March 3, 1965
(Signature) (Title) (Date)

1/ This consent may be executed by the taxpayer's attorney or agent, provided such action is specifically authorized by a power of attorney, which, if not previously filed, must accompany the consent.

If executed with respect to a year for which a JOINT RETURN OF A HUSBAND AND WIFE was filed, this consent must be signed by both spouses unless one spouse, acting under a power of attorney, signs as agent for the other.

If a consent form is executed by a person acting in a fiduciary capacity, such as executor, administrator, or trustee, such person must submit Form 56, "Notice to the District Director of Internal Revenue of Fiduciary Relationship," together with certified copy of letters of administration, letters testamentary, trust instruments, or court certificate.

2/ If this consent is executed on behalf of a corporation, it shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition to which the seal of the corporation must be affixed. Where the corporation has no seal, the consent must be accompanied by a certified copy of the resolution passed by the board of directors, giving the officer authority to sign the consent.

GOVERNMENT'S EXHIBIT 2-B

FORM 872 (REV. 6-58)

U. S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE

CONSENT FIXING PERIOD OF LIMITATION UPON ASSESSMENT OF INCOME AND PROFITS TAX

To be executed in triplicate

REC'D DIRECTOR, INTERNAL REVENUE

IN REPLY REFER TO:

MAR 2 - 1965

FIELD AUDIT 413-4-1
JACKSONVILLE, FLORIDA

In pursuance of the provisions of existing Internal Revenue Laws, Robert T. Mathis, a taxpay

(or taxpayers) of 1710 Broxey Court, N. E., (Street address) Winter Haven, (City) Florida (State), a

the District Director of Internal Revenue (or Assistant Regional Commissioner-Appellate) hereby consent and agr as follows:

That the amount of any income, excess-profits, or war-profits taxes due under any return (or returns) made by on behalf of the above-named taxpayer (or taxpayers) for the taxable year ended December 31, 1961 under existing acts, or under prior revenue acts, may be assessed at any time on or before December 31, 1965 (Date), exce that if a notice of a deficiency in tax is sent to said taxpayer (or taxpayers) by certified mail or registered mail on before said date, then the time for making any assessment as aforesaid shall be extended beyond the said date by t number of days during which the making of an assessment is prohibited and for sixty days thereafter.

Robert T. Mathis (Signature) 1/ (Date) SEAL 2/

(Signature) 1/ (Date)

By (Signature) (Title) (Date)

LAURIE W. TOMLINSON
District Director of Internal Revenue
Assistant Regional Commissioner-Appellate

By Paul A. Thompson Group Supervisor (Title) March 3, 1965 (Date)

1/ This consent may be executed by the taxpayer's attorney or agent, provided such action is specifically authorized by a power of attorney, which, if not previously filed, must accompany the consent.

If executed with respect to a year for which a JOINT RETURN OF A HUSBAND AND WIFE was filed, this consent must be signed by both spouses unless one spouse, acting under a power of attorney, signs as agent for the other.

If a consent form is executed by a person acting in a fiduciary capacity, such as executor, administrator, or trustee, such person must submit Form 56, "Notice to the District Director of Internal Revenue of Fiduciary Relationship," together with certified copy of letters of administration, letters testamentary, trust instruments, or court certificate.

2/ If this consent is executed on behalf of a corporation, it s be signed with the corporate name, followed by the signat and title of such officer or officers of the corporation as are powered under the laws of the State in which the corporation located to sign for the corporation, in addition to which the s of the corporation must be affixed. Where the corporation no seal, the consent must be accompanied by a certified c of the resolution passed by the board of directors, giving officer authority to sign the consent.

U.S. GOVERNMENT PRINTING OFFICE: 1959 O - 581181

FORM 872 (REV. 6-

March 1, 196
1710 Brow
Wilt Haven,

U.S. Treasury Department
Internal Revenue Service
Jacksonville, Florida

59 1962

DI REV.

Dear Sir:

This is the same account for Robert T. and Mattie L. Wilkins which has always been a joint account although I am filing separately this year and she will file later. Note that I am not using her as dependent but for exemption.

Also last year we received a refund and I should be receiving one this year due to the fact that I am using on Six (6) children for exemptions. She will file separately this year.

There has never been a time that I received notice from Due U.S. Treasury Dept.

Please check your files and this card thoroughly and note the error which is circled in Red. I do believe that a refund is due me. But after computation is completed please notify me at your earliest convenience.

Also if a "C" copy is needed for correction of your files please notify me in your reply.

Thanks

Robert T. Mathis

ROBERT T. MATHIS

RECEIVED
59
MAR 2 1962
DIRECTOR INT REV.
JACKSONVILLE

GOVERNMENT'S EXHIBIT 10

Larry L. Mathis
General Delivery
Winter Haven, Florida

FIVE UNITED STATES POSTAGE CENTS 5

District Director
Internal Revenue Service
Jacksonville, Florida

Very Urgent

Form 1040A **U. S. INDIVIDUAL INCOME TAX RETURN (Less than $10,000 total income)** **1962**

Please print →

1. Name (If a joint return of husband and wife, use first names and middle initials of both): Larry L. Mathis
Home address (Number and street or rural route): General Delivery
City, town, or post office: Winter Haven, Florida — Zone — State

2. Your Social Security Number: 267 80 1790
3. Wife's Social Security Number:

4. Check one:
☐ Single; ☒ Married filing joint return (even if only one had income);
☐ Married filing separate return—If wife or husband also filing separately, give name Bessie Ann (Decease)

5. WAGES SHOWN ON FORMS W-2 AND OTHER INCOME		FEDERAL INCOME TAX WITHHELD		EMPLOYER'S NAME. Where employed, Write (W) before name of each of wife's employers
If item 9 is $10,000 or more, or if item 6 is over $200, use Form 1040.	4940 00		988 00	L. Williams Cons. Co. (122nd Rash) NEW YORK, NY (135th St.)
6. INTEREST, DIVIDENDS, AND OTHER WAGES — Yours		7. Total Federal income tax withheld		8. If you had an expense allowance or charged expenses to your employer, see instruction 8 and check here ☐ if appropriate.
Wife's				
9. TOTAL INCOME →	4940 00		988 00	
10. Enter tax from Tax Table or from tax computation schedule →				
11. If item 10 is larger than item 7, enter balance due →				
12. If item 7 is larger than item 10, enter refund →				

Enclose Forms W-2, Copy B. If your income was $5,000 or more, you must compute your tax. However, if your income was less than $5,000, you may have the Internal Revenue Service compute your tax by omitting items 10, 11, and 12. If you compute your own tax, pay balance (item 11) in full with return to your District Director.

● Check here ☐ if you want refund applied to U.S. Savings Bonds.

U.S. TREASURY DEPARTMENT ● INTERNAL REVENUE SERVICE (OVER) LIST YOUR EXEMPTIONS AND SIGN ON OTHER SIDE.

13. EXEMPTIONS FOR YOURSELF—AND WIFE (only if all her income is included in this return, or she had no income)

Check boxes which apply.
(a) Regular $600 exemption ☒ Yourself ☐ Wife
(b) Additional $600 exemption if 65 or over at end of 1962 ☐ Yourself ☐ Wife
(c) Additional $600 exemption if blind at end of 1962 ☐ Yourself ☐ Wife

Enter number of boxes checked → 1

14. EXEMPTIONS FOR YOUR CHILDREN AND OTHER DEPENDENTS (List below)

NAME ▶ Enter figure 1 in the last column to right for each name listed (Give address if different from yours)	Relationship	ANSWER ONLY FOR DEPENDENTS OTHER THAN YOUR CHILDREN: Months lived in your home. If born or died during year also write "B" or "D"	Did dependent have income of $600 or more?	Amount YOU furnished for dependent's support. If 100% write "ALL"	Amount furnished by OTHERS including dependent. See instruction 14	
Geneva	Day			$	$	→ 1
Carolyn	Day					→ 1
Patricia	Day					→ 1
James	Son					→ 1
Larry L, Jr.	Son					→ 1
David A & Leon J.	Son & Son					→ 2

15. Total exemptions from items 13 and 14 above → 8

SIGN HERE → I declare under the penalties of perjury that to the best of my knowledge and belief this is a true, correct, and complete return.
Larry L. Mathis (Your signature) Feb 5, 1962 (Date) (If joint return, wife's signature) (Date)

● If joint return, BOTH HUSBAND AND WIFE MUST SIGN even if only one had income.

TC-

General Delivery
Winter Haven Fla.
February 5, 1960

Dear Sirs:

Please process my tax return immediately if anyway possible.

It is believed that I am going to have a refund. The reason I am making this request is; one of my daughters must have an immediate operation according to our family physician. If I do have a refund and can obtain it very shortly; I can meet this emergency financially.

From the expensive medical bills which I had had to pay, has caused me to get behind in my mortgage payments, too.

Thanks for your urgent consideration.

Sincerely

Percy L. Mathis

23827

Mrs. Mattie L. Mathis
1710 Broxey Court, N.E.
Winter Haven, Florida

43-7365200
L. WILLIAMS CONS. CO.
229 EAST 135TH STREET
EW YORK, N.Y.
e print EMPLOYER'S identification number, name, and address above.

WITHHOLDING TAX STATEMENT 1962
Federal taxes withheld from wages

Copy B—To be filed with employee's tax return

SOCIAL SECURITY INFORMATION		INCOME TAX INFORMATION		
940 00	$ 164.84	$ 4940 00	$ 988 00	
al F.I.C.A. wages aid in 1962	F.I.C.A. employee tax withheld, if any	Total wages* paid in 1962	Federal income tax withheld, if any	

SS 267-80-1790
LARRY L. MATHIS
GENERAL DELIVERY
WINTER HAVEN, FLORIDA
e print EMPLOYEE'S social security account no., name, and address above.

EMPLOYEE: This is not a tax return but you must file it with Form 1040A, or Form 1040. See instructions on other side and on back of copy C.

If you expect to owe more income tax for next year than will be withheld if you claim every exemption to which you are entitled, you may increase the withholding by claiming a smaller number of exemptions or you may enter into an agreement with your employer to have additional amounts withheld. See Form W-4.

FOR USE OF INTERNAL REVENUE SERVICE

Employee's copy and employer's copy compared

M W-2—U.S. Treasury Department, Internal Revenue Service

*Before payroll deductions for "sick pay" exclusion.

NOTICE TO EMPLOYEE:

1. Income Tax Wages.—This statement is important. It must be filed with your U. S. Income Tax Return for 1962. If your account number, name, or address is stated incorrectly, correct the information on copy B and notify your employer.

2. Social Security Wages.—If your wages were subject to social security taxes, but are not shown, your social security wages are the same as wages shown under "INCOME TAX INFORMATION," but not more than $4,800.

3. Credit For F.I.C.A. Tax.—If more than $150.00 of F.I.C.A. (social security) employee tax was withheld during 1962 because you received wages from more than one employer, the excess should be claimed as a credit against income tax. See instructions with your income tax return.

☆ U.S. GOVERNMENT PRINTING OFFICE 644488

February 3, 1943

Say Mattie:

After you left, me and Carmichael was talking and he told me he would mail the things to you instead of you making a trip up here. So mail the letter that say Mary Margaret Tuesday and the other one Wednesday. If you can come back Sunday please do and bring the 3 if you get them from U.S. Postmaster. We will do the same thing and you will not have to even come back up here because even the things that you can do for me I could write it on paper. So if you can get Sonny to bring you Sunday and you have the 3 with you come and that will be your last trip here.

(over)

~~43-7365200~~ 43-7365200
L. WILLIAMS CONS. CO.
1229 EAST 135TH STREET
NEW YORK, N.Y.

Type or print EMPLOYER'S identification number, name, and address above.

WITHHOLDING TAX STATEMENT 196
Federal taxes withheld from wages

Copy B—To be filed with employee's tax ret

SOCIAL SECURITY INFORMATION		INCOME TAX INFORMATION	
$4836.00	$160.00	$4836.00	$967.60
Total F.I.C.A. wages paid in 1962	F.I.C.A. employee tax withheld, if any	Total wages* paid in 1962	Federal income tax withheld, if any

SS 260-75-1500
R.T. MATHIS
GEN DEL F.V.S TA
WINTER HAVEN, FLORIDA

Type or print EMPLOYEE'S social security account no., name, and address above.

EMPLOYEE: This is not a tax return but you must file it with Form 1040A, or Form 1040. See instructions on other and on back of copy C.

If you expect to owe more income tax for next year than be withheld if you claim every exemption to which you are titled, you may increase the withholding by claiming a sm number of exemptions or you may enter into an agreement your employer to have additional amounts withheld. Form W-4.

FOR USE OF INTERNAL REVENUE SERVICE

Employee's copy and employer's copy compared . . . . . .

FORM W-2—U.S. Treasury Department, Internal Revenue Service

*Before payroll deductions or "sick pay" exclusion.

NOTICE TO EMPLOYEE:

1. Income Tax Wages.—This statement is important. It must be filed with your U. S. Income Tax Return for 1962. If your account number, name, or address is stated incorrectly, correct the information on copy B and notify your employer.

2. Social Security Wages.—If your wages were subject to social security taxes, but are not shown, your social security wages are the same as wages shown under "INCOME TAX INFORMATION," but not more than $4,800.

3. Credit For F.I.C.A. Tax.—If more than $150.00 of F.I.C.A. (social security) employee tax was withheld during 1962 because you received wages from more than one employer, the excess should be claimed as a credit against income tax. See instructions with your income tax return.

☆ U.S. GOVERNMENT PRINTING OFFICE 644482

[fol. A-194]

GOVERNMENT'S EXHIBIT 11

UNITED STATES OF AMERICA

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

23827

CERTIFICATION OF TRUE COPY

Pursuant to the provisions of Section 623d, Chapter 11A, Title 5, United States Code and the authority vested in me by the Secretary (30 F.R. 13908), I hereby certify that the annexed are true copies of the documents on file in the Department of Health, Education, and Welfare.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Department of Health, Education, and Welfare to be affixed, on this 21st day of June 1966.

J. L. Fay, Director
Bureau of Data Processing and Accounts
Social Security Administration

GOVT EXHIBIT 11
USA
Mathos
FILED IN EVIDENCE
6-23 1966
JOSEPH J. BOGART, Clerk
Case 65-513 Cr-EC

Form SS-5
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
(Revised September 1943)

APPLICATION FOR SOCIAL SECURITY ACCOUNT NUMBER

REQUIRED UNDER THE FEDERAL INSURANCE CONTRIBUTIONS ACT
READ INSTRUCTIONS ON BACK BEFORE FILLING IN FORM

265-32-1464
DO NOT WRITE IN THE ABOVE SPACE

EACH ITEM MUST BE FILLED IN. IF THE INFORMATION CALLED FOR IN ANY ITEM IS NOT KNOWN, WRITE "UNKNOWN." PRINT IN BLACK OR DARK BLUE INK OR USE TYPEWRITER FOR ALL ITEMS EXCEPT SIGNATURE.

1. ROBERT THEODORE MATHIS
FIRST NAME — MIDDLE NAME (IF YOU USE NO MIDDLE NAME, TO INITIAL, DRAW A LINE ——) — LAST NAME

SHOW NAME YOU GAVE YOUR PRESENT EMPLOYER OR IF UNEMPLOYED, THE NAME YOU WILL USE WHEN EMPLOYED

2. Bx 386 FLORENCE VILLA (CITY) FLA (STATE)
PRESENT MAILING ADDRESS (NUMBER AND STREET)

3. SAME
ENTER FULL NAME GIVEN YOU AT BIRTH

4. 15 ABE AT LAST BIRTHDAY
5. JAN 6 1928 DATE OF BIRTH (MONTH) (DAY) (YEAR)
6. FLORENCE VILLA POLK FLA
PLACE OF BIRTH (CITY) (COUNTY) (STATE)

7. LOUIS MATHIS
FATHER'S FULL NAME, REGARDLESS OF WHETHER LIVING OR DEAD

8. MARY PETERSON
MOTHER'S FULL NAME BEFORE EVER MARRIED, REGARDLESS OF WHETHER LIVING OR DEAD

9. SEX: (MARK (X) WHICH) ☐ MALE ☐ FEMALE
10. COLOR OR RACE: (MARK (X) WHICH) ☐ WHITE ☐ NEGRO ☐ OTHER (SPECIFY)

11. HAVE YOU EVER BEFORE APPLIED FOR OR HAD (MARK (X) WHICH)
(A) SOCIAL SECURITY ACCOUNT NUMBER — YES ☐ NO ☑
(B) RAILROAD RETIREMENT NUMBER — YES ☐ NO ☑
IF ANSWER IS "YES," ENTER PLACE AND DATE OF ORIGINAL APPLICATION

12. WINTER HAVEN FRUIT SALES CORP.
BUSINESS NAME AND ADDRESS OF EMPLOYER. IF UNEMPLOYED, WRITE "UNEMPLOYED." (NUMBER AND STREET) (CITY) (STATE)

13. WINTER HAVEN, FLORIDA
TODAY'S DATE

14. Robert T Mathis
WRITE YOUR NAME AS USUALLY WRITTEN (DO NOT PRINT) USE BLACK OR DARK BLUE INK

6/29/43

RETURN COMPLETED APPLICATION TO, OR SECURE INFORMATION ON HOW TO FILL IN APPLICATION FROM, NEAREST SOCIAL SECURITY BOARD FIELD OFFICE. THE ADDRESS CAN BE OBTAINED FROM LOCAL POST OFFICE.

16—5528 2

DO NOT WRITE IN THIS SPACE

320

1-2

APPLICATION FOR SOCIAL SECURITY NUMBER
(Or Replacement of Lost Card)

Information Furnished On This Form Is CONFIDENTIAL

See Instructions on back. Print in Black or Dark Blue Ink or Use Typewriter.

DO NOT WRITE IN THE ABOVE SPACE

1. Print FULL NAME YOU WILL USE IN WORK OR BUSINESS: Eugene (First Name) Maurice (Middle Name or Initial) Parrish (Last Name)
2. Print FULL NAME GIVEN YOU AT BIRTH: Eugene Maurice Parrish
3. PLACE OF BIRTH: Griffin (City) Spalding (County if known) Georgia (State)
4. MOTHER'S FULL NAME AT HER BIRTH (Her maiden name): Mary Victoria Kunigen
5. FATHER'S FULL NAME (Regardless of whether living or dead): Eugene Albert Parrish
6. YOUR DATE OF BIRTH (Month) (Day) (Year): 12 14 49
7. YOUR PRESENT AGE (Age on last birthday): 1[illegible]
8. YOUR SEX: ☒ MALE ☐ FEMALE
9. YOUR COLOR OR RACE: ☒ WHITE ☐ NEGRO ☐ OTHER
10. HAVE YOU EVER BEFORE APPLIED FOR OR HAD A SOCIAL SECURITY, RAILROAD, OR TAX ACCOUNT NUMBER? ☒ NO ☐ DON'T KNOW ☐ YES (If "Yes," give STATE in which you applied and DATE and PLACE, if known, of SOCIAL SECURITY NUMBER if known)
11. YOUR MAILING ADDRESS (Number and street): R.F.D. 4 Box 393 (City) Jackson (State) Ga (ZIP Code) 30233
12. TODAY'S DATE: 12 3 43
13. (Sign YOUR NAME HERE)

TREASURY DEPARTMENT (Internal Revenue Service)
Form SS-5 (12-43)

SOCIAL SECURITY ADMINISTRATION DISTRICT OFFICE

HAVE YOU COMPLETED ALL 13 ITEMS?

Form 68-5
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
(Revised July 1937)

U.S. SOCIAL SECURITY ACT — APPLICATION FOR ACCOUNT NUMBER

263-24-0405

EACH ITEM SHOULD BE FILLED IN. IF ANY ITEM IS NOT KNOWN, WRITE "UNKNOWN"

PRINT NAME

1. Ruby (EMPLOYEE'S FIRST NAME) — (MIDDLE NAME) — Tyndal (LAST NAME)
2. 313 Palm ave. (STREET AND NUMBER) 3. Eustis (POST OFFICE) Florid (STATE)
4. Poorman's Cafe (BUSINESS NAME OF PRESENT EMPLOYER) 5. Eustis Fla. Bay St. (BUSINESS ADDRESS OF PRESENT EMPLOYER)
6. 18 (AGE AT LAST BIRTHDAY) 7. 9th Nov 1921 (DATE OF BIRTH: MONTH) (DAY) (YEAR) (SUBJECT TO LATER VERIFICATION) 8. Dublin Ga (PLACE OF BIRTH)
9. Mr James Tyndal (FATHER'S FULL NAME, REGARDLESS OF WHETHER LIVING OR DEAD) 10. Anna Tyndal (MOTHER'S FULL MAIDEN NAME, REGARDLESS OF WHETHER LIVING OR DEAD)
11. SEX: MALE ___ FEMALE ✓ (CHECK ('✓') WHICH) 12. COLOR: WHITE ✓ NEGRO ___ (CHECK ('✓') WHICH) OTHER ___ (SPECIFY) Varn
13. GIVE DATE YOU BECAME AN EMPLOYEE (IF YOU BEGAN EMPLOYMENT AFTER NOV. 24, 1936) March 18th 21
14. HAVE YOU FILLED OUT A CARD LIKE THIS BEFORE? No (IF ANSWER IS "YES" ENTER PLACE AND DATE OF ORIGINAL FILING AND REASONS FOR FILING AGAIN)
15. March 15th (DATE SIGNED) 16. Miss Ruby Tyndal (EMPLOYEE'S SIGNATURE AS USUALLY WRITTEN—DO NOT PRINT)

DETACH ALONG THIS LINE

Form 68-5
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
(Revised 7-40)

APPLICATION FOR SOCIAL SECURITY ACCOUNT NUMBER

REQUIRED UNDER THE FEDERAL INSURANCE CONTRIBUTIONS ACT
READ INSTRUCTIONS ON BACK BEFORE FILLING IN FORM

263-24-0405
DO NOT WRITE IN THE ABOVE SPACE

FILL IN EACH ITEM. PRINT IN BLACK OR DARK BLUE INK OR USE TYPEWRITER FOR ALL ITEMS EXCEPT SIGNATURE. IF THE INFORMATION CALLED FOR IN ANY ITEM IS NOT KNOWN, WRITE "UNKNOWN"

1. PRINT NAME YOU GAVE YOUR PRESENT EMPLOYER, OR, IF UNEMPLOYED, THE NAME YOU WILL USE WHEN EMPLOYED — FIRST NAME: Ruby — MIDDLE NAME (IF YOU USE NO MIDDLE NAME OR INITIAL, DRAW A LINE ——): Tyndal — LAST NAME: Crowe
2. MAILING ADDRESS (NO. AND STREET, P.O. BOX, OR RFD) (CITY) (ZONE) (STATE): Wildwood Fla
3. PRINT FULL NAME GIVEN YOU AT BIRTH: Ruby Tyndal
4. AGE ON LAST BIRTHDAY: 33
5. DATE OF BIRTH (MONTH) (DAY) (YEAR): Nov. 9 1921
PLACE OF BIRTH (CITY) (COUNTY) (STATE): Ga. Dublin Ga.
7. FATHER'S FULL NAME, REGARDLESS OF WHETHER LIVING OR DEAD: James Leoward Tyndal
8. MOTHER'S FULL NAME BEFORE EVER MARRIED, REGARDLESS OF WHETHER LIVING OR DEAD: Anna Vann
9. SEX (MARK (X) WHICH): MALE [X] FEMALE [ ]
10. COLOR OR RACE (MARK (X) WHICH) (IF OTHER, SPECIFY): WHITE [X] NEGRO [ ] OTHER [ ]
11. HAVE YOU EVER BEFORE APPLIED FOR OR HAD A SOCIAL SECURITY OR RAILROAD RETIREMENT NUMBER? YES [X] NO [ ] DON'T KNOW [ ]
IF ANSWER IS "YES", PRINT THE STATE IN WHICH YOU FIRST APPLIED AND WHEN — STATE: Fla. DATE: 1
ALSO PRINT YOUR ACCOUNT NUMBER IF YOU KNOW IT — ACCOUNT NUMBER: 263-24-0405
12. BUSINESS NAME OF EMPLOYER (IF UNEMPLOYED, WRITE "UNEMPLOYED"): Sauca Rock. Co. Wh. C. I. Work
EMPLOYER'S ADDRESS (NO. AND STREET) (CITY) (ZONE) (STATE)
13. TODAY'S DATE: 6/29/55
14. WRITE YOUR NAME AS USUALLY WRITTEN (DO NOT PRINT): Ruby Crowe,

Today's Aug. 4-55

RETURN COMPLETED APPLICATION TO NEAREST SOCIAL SECURITY ADMINISTRATION FIELD OFFICE

DO NOT WRITE IN THIS SPACE

Form SS-5
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
(Revised September 1943)

APPLICATION FOR SOCIAL SECURITY ACCOUNT NUMBER

REQUIRED UNDER THE FEDERAL INSURANCE CONTRIBUTIONS ACT
READ INSTRUCTIONS ON BACK BEFORE FILLING IN FORM

264-34-5310
DO NOT WRITE IN THIS SPACE

EACH ITEM MUST BE FILLED IN. IF THE INFORMATION CALLED FOR IN ANY ITEM IS NOT KNOWN, WRITE "UNKNOWN." PRINT IN BLACK OR DARK BLUE INK OR USE TYPEWRITER EXCEPT SIGNATURE.

1. Mattie Lee Henry — FIRST NAME / MIDDLE NAME (IF YOU USE NO MIDDLE NAME OR INITIAL, DRAW A LINE ——) / LAST NAME
SHOW NAME YOU GAVE YOUR PRESENT EMPLOYER; OR IF UNEMPLOYED, THE NAME YOU WILL USE WHEN EMPLOYED.

2. Florence Villa, Fla. — PRESENT MAILING ADDRESS (NUMBER AND STREET) / (CITY) / (STATE)

3. (same) — ENTER FULL NAME GIVEN YOU AT BIRTH

4. 13 — AGE AT LAST BIRTHDAY

5. Apr. 27 1930 — DATE OF BIRTH (MONTH) (DAY) (YEAR)

6. Cotton Russell, Ala. — PLACE OF BIRTH (CITY) (COUNTY) (STATE)

7. Sam Henry — FATHER'S FULL NAME, REGARDLESS OF WHETHER LIVING OR DEAD

8. Ella Boston — MOTHER'S FULL NAME BEFORE EVER MARRIED, REGARDLESS OF WHETHER LIVING OR DEAD

9. SEX: (MARK (X) WHICH) ☐ MALE ☒ FEMALE

10. COLOR OR RACE: (MARK (X) WHICH) ☒ WHITE ☐ NEGRO ☐ OTHER (SPECIFY) _____

11. HAVE YOU EVER BEFORE APPLIED FOR OR HAD (MARK (X) WHICH)
(A) SOCIAL SECURITY ACCOUNT NUMBER ☐ YES ☒ NO
(B) RAILROAD RETIREMENT NUMBER ☐ YES ☐ NO
IF ANSWER IS "YES," ENTER PLACE AND DATE OF PREVIOUS APPLICATION

12. Winter Haven Laundry Co. 116-6th — BUSINESS NAME AND ADDRESS OF EMPLOYER. IF UNEMPLOYED, WRITE "UNEMPLOYED" / (NUMBER AND STREET) / (CITY) / (STATE)

13. Nov 1 43 — TODAY'S DATE

14. Mattie Lee Henry — WRITE YOUR NAME AS USUALLY WRITTEN (DO NOT PRINT) USE BLACK OR DARK BLUE INK

RETURN COMPLETED APPLICATION TO, OR SECURE INFORMATION ON HOW TO FILL IN APPLICATION FROM, NEAREST SOCIAL SECURITY BOARD FIELD OFFICE. THE ADDRESS CAN BE OBTAINED FROM LOCAL POST OFFICE.

DO NOT WRITE IN THIS SPACE

APPLICATION FOR SOCIAL SECURITY ACCOUNT NUMBER
(Or Replacement of Lost Card)

Information Furnished On This Form Is CONFIDENTIAL

264-34-5310
DO NOT WRITE IN THE ABOVE SPACE

Read Instructions on Back Before Filling in Form. Print in Dark Ink or Use Typewriter.

1 Print FULL NAME YOU USE IN WORK OR BUSINESS: (First Name) MATTIE (Middle Name or Initial — if none, draw line ——) LEE (Last name) MATHIS

2 Print FULL NAME GIVEN YOU AT BIRTH: MATTIE LEE HENRY

3 DATE OF BIRTH (Month) (Day) (Year): APRIL 27 1930

4 PLACE OF BIRTH (City) COTTON (County) RUSSELL (State) ALA

5 AGE ON LAST BIRTHDAY: 29

6 SEX: ☐ MALE ☒ FEMALE

7 COLOR OR RACE: ☒ WHITE ☐ NEGRO ☐ OTHER

8 MOTHER'S FULL NAME AT HER BIRTH: ELLA BOSTON

9 FATHER'S FULL NAME (Regardless of whether living or dead): SAMMIE LEE HENRY

10 HAVE YOU EVER BEFORE APPLIED FOR OR HAD A SOCIAL SECURITY OR RAILROAD RETIREMENT NUMBER? ☐ YES ☐ NO ☒ DON'T KNOW
IF ANSWER IS "YES" PRINT (State) (Date) THE STATE IN WHICH YOU FIRST APPLIED AND WHEN
PRINT YOUR ACCOUNT NUMBER IF YOU KNOW IT (Account Number)

11 ARE YOU NOW— ☐ EMPLOYED ☐ SELF-EMPLOYED ☒ UNEMPLOYED

12 MAILING ADDRESS (Number and Street) P.O. BOX 1144 F.V. Station (City) WINTER HAVEN (Zone) 5 (State) FLA

13 TODAY'S DATE: Oct. 29 1959

14 Write YOUR NAME AS YOU USUALLY WRITE IT. (Do Not Print or Type—Use Dark Ink): Mattie Lee Mathis

TREASURY DEPARTMENT Internal Revenue Service
Form SS-5 (Revised 3/39)

Return completed application to nearest SOCIAL SECURITY ADMINISTRATION DISTRICT OFFICE

AL COMPLETAR ESTA SOLICITUD DEVUÉLVALA A SU OFICINA DE SEGURO SOCIAL FEDERAL MÁS CERCANA

Solicitud Para Número de Cuenta del Seguro Social

Bajo la Ley Federal de Contribuciones de Seguros

(Lea instrucciones al dorso antes de llenar la forma)

267-80-1790

No escriba en el espacio de arriba

LLENE TODOS LOS ITEMS. LLENE EN LETRA DE MOLDE EN TINTA NEGRA O AZUL OSCURO, O EN MAQUINILLA. SI NO SABE LA INFORMACIÓN SOLICITADA EN CUALESQUIERA DE LOS ITEMS, ESCRIBA "NO SÉ."

1 ESCRIBA EN LETRA DE MOLDE EL NOMBRE POR EL CUAL USTED ES CONOCIDO: Concepcion Labrada-BERN

2 DIRECCIÓN POSTAL (CALLE Y NÚM., APARTADO O RFD) (CIUDAD) (ESTADO): 1120 Tenth St Miami Beach, FLA

3 NOMBRE COMPLETO QUE RECIBIÓ AL NACER: Concepcion Edelmira Labrada Bernal

4 EDAD EN SU ÚLTIMO CUMPLEAÑOS: 59

5 FECHA DE NACIMIENTO (MES) (DÍA) (AÑO): 1-2-04

6 SITIO DE NACIMIENTO (CIUDAD) (PAÍS): Ciego de Avila, Camaguey CUBA

7 NOMBRE COMPLETO DEL PADRE, AUNQUE HAYA MUERTO: Armando Labrada

8 NOMBRE COMPLETO DE SOLTERA DE LA MADRE, AUNQUE YA HAYA MUERTO: Emilia Bernal

9 SEXO (MARQUE (X) CUÁL) HOMBRE ☐ MUJER ☒

10 COLOR O RAZA (MARQUE (X) CUÁL) BLANCO ☒ NEGRO ☐ OTRO ☐

11 ¿HA SOLICITADO ANTES O HA TENIDO NÚMERO DEL SEGURO SOCIAL O DEL RETIRO FERROVIARIO? (MARQUE (X) CUÁL) SÍ ☐ NO ☒ NO SÉ ☐

SI SU CONTESTACIÓN ES "SÍ" INDIQUE LA CIUDAD Y EL ESTADO DONDE SOLICITÓ Y FECHA

ESCRIBA TAMBIÉN SU NÚMERO DEL SEGURO SOCIAL SI LO SABE

12 NOMBRE COMERCIAL Y DIRECCIÓN DEL PATRONO SI ESTÁ EMPLEADO

☐ NEGOCIO PROPIO U OFICIO ☒ DESEMPLEADO

13 FECHA DE HOY: 9-13-63

14 FIRME SU NOMBRE COMO USTED ACOSTUMBRA (NO USE LETRAS DE MOLDE): Concepcion Labrada

No escriba en este espacio

Form SS-5 PR U. S. TREASURY DEPARTMENT Internal Revenue Service (Revised 7-56)

Form SS-5
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
(Revised 7-48)

APPLICATION FOR SOCIAL SECURITY ACCOUNT NUMBER

REQUIRED UNDER THE FEDERAL INSURANCE CONTRIBUTIONS ACT
READ INSTRUCTIONS ON BACK BEFORE FILLING IN FORM

54-30-1955

DO NOT WRITE IN THE ABOVE SPACE

FILL IN EACH ITEM. PRINT IN BLACK OR DARK BLUE INK OR USE TYPEWRITER FOR ALL ITEMS EXCEPT SIGNATURE. IF THE INFORMATION CALLED FOR IN ANY ITEM IS NOT KNOWN, WRITE "UNKNOWN."

1 PRINT NAME YOU GAVE YOUR PRESENT EMPLOYER, OR IF UNEMPLOYED, THE NAME YOU WILL USE WHEN EMPLOYED — FIRST NAME: RUTH — MIDDLE NAME (IF YOU USE NO MIDDLE NAME OR INITIAL, DRAW A LINE ——): E. — LAST NAME: KOCH

2 MAILING ADDRESS (NO. AND ST., P. O. BOX, OR RFD) (CITY) (ZONE) (STATE): 606 BRADLEY RD. Bay VILLAGE OHIO

3 PRINT FULL NAME GIVEN YOU AT BIRTH: RUTH KOCH

4 AGE ON LAST BIRTHDAY: 48

5 DATE OF BIRTH (MONTH) (DAY) (YEAR): 1 17 1902

6 PLACE OF BIRTH (CITY) (COUNTY) (STATE): CLEVELAND CUYAHOGA OHIO

7 FATHER'S FULL NAME, REGARDLESS OF WHETHER LIVING OR DEAD: WILLIAM KOCH

8 MOTHER'S FULL NAME BEFORE EVER MARRIED, REGARDLESS OF WHETHER LIVING OR DEAD: ELLA BAXTER

9 SEX (MARK (X) WHICH) MALE ☐ FEMALE ☒

10 COLOR OR RACE (MARK (X) WHICH) WHITE ☒ NEGRO ☐ OTHER ☐ (IF OTHER, SPECIFY)

11 HAVE YOU EVER BEFORE APPLIED FOR OR HAD A SOCIAL SECURITY OR RAILROAD RETIREMENT NUMBER? (MARK (X) WHICH) YES ☐ NO ☒ DON'T KNOW ☐

IF ANSWER IS "YES" PRINT THE STATE IN WHICH YOU FIRST APPLIED AND WHEN: STATE — DATE /

ALSO PRINT YOUR ACCOUNT NUMBER IF YOU KNOW IT: ACCOUNT NUMBER

12 BUSINESS NAME OF EMPLOYER. IF UNEMPLOYED, WRITE "UNEMPLOYED": LUTHERAN HOSPITAL

EMPLOYER'S ADDRESS (No. AND STREET) (CITY) (ZONE) (STATE): 2605 FRANKLIN BLVD CLEVELAND OHIO 13

13 TODAY'S DATE: 12-21-50

14 WRITE YOUR NAME AS USUALLY WRITTEN (DO NOT PRINT): Ruth Koch

DO NOT WRITE IN THIS SPACE

16—50.3-7

RETURN COMPLETED APPLICATION TO NEAREST SOCIAL SECURITY ADMINISTRATION FIELD OFFICE

U. S. GOVERNMENT PRINTING OFFICE: 1950

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 726

ROBERT T. MATHIS, SR.,

Petitioner,

—v.—

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF PETITIONER

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BRIEF OF PETITIONER

(a) The opinion of the United States Court of Appeals, Fifth Circuit, sought to be reviewed herein, dated April 28, 1967, is officially reported at 376 Fed. 2d 595 and is shown in the printed Appendix beginning on Page A-6.

(b) Jurisdiction of this Court is invoked pursuant to the provisions of Rule 37(b)(1)(2) of the Federal Rules of Criminal Procedure. As set forth in the petition for writ of certiorari, the United States Court of Appeals, Fifth Circuit, entered the opinion as above stated on the 28th

day of April, 1967. A petition for rehearing was filed on May 9, 1967, which was denied by the United States Court of Appeals, Fifth Circuit, on May 25, 1967 (A-9). The issuance of the mandate was stayed by the United States Court of Appeals, Fifth Circuit, on June 1, 1967, for a period of thirty days from May 25, 1967. A timely petition for a writ of certiorari to the United States Court of Appeals, Fifth Circuit, was filed by the Petitioner, ROBERT T. MATTHIS, SR., on June 26, 1967, and certiorari was granted by this Court on October 16, 1967.

(c) **Constitutional Provisions and Statutes Involved**

(1) United States Constitution, Sixth Amendment:

> "In all criminal prosecution, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district, wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense."

(2) U.S.C.A., Title 18, §287, Page 26:

> "Whoever makes or presents to any person or officer in the civil, military, or naval service of the United States, or to any department or agency thereof, any claim upon or against the United States, or any department or agency thereof, knowing such claim to be false, fictitious, or fraudulent, shall be fined not more than $10,000.00 or imprisoned not more than five years, or both."

(3) U.S.C.A., Title 18, Rule 41(e), Federal Rules of Criminal Procedure, Page 213:

> " * * * The motion shall be made before trial or hearing unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion, but the court in its discretion may entertain the motion at the trial or hearing."

(d) (1) **Questions Presented**

I

Did the lower Court err in admitting into evidence testimony and documents obtained in violation of Petitioner's constitutional rights?

II

Did the lower Court abuse its discretion in not entertaining Petitioner's motion to suppress such evidence at the time of trial, where the Petitioner was not aware of the grounds for the motion to suppress until the time of trial?

(e) **A Concise Statement of the Case**

Your Petitioner, ROBERT T. MATHIS, SR., was charged in a two-count indictment rendered by the Grand Jury at Miami, Florida, in the United States District Court for the Southern District of Florida charging the Petitioner with knowingly and wilfully filing with the District Director of Internal Revenue at Jacksonville, Florida, a false claim for an income tax refund for the year 1960, in Count One, and for an income tax refund for the year 1961, in Count Two, in violation of Title 18, U.S.C., Section 287 (A-2).

He was convicted on both counts (A-3) and sentenced for a period of 30 months on each count to run concurrently (A-4).

The Government contended that the Petitioner, ROBERT T. MATHIS, SR., received and cashed a refund check for the year 1960 in the sum of $885.60 (Government's Exhibit 3, R-54, A-42, 107) and that, although he filed a false claim for an income tax refund in 1961 in the sum of $931.20, and a refund check was issued and cashed, it is interesting to note that only the 1960 refund check was offered in evidence (Government's Exhibit 3, R-52, 54, A-40, 42, 107).

The Government, over Petitioner's objections, was permitted to introduce through Walter McDaniel (R-8, A-17), Personal Representative of the District Director of Internal Revenue for the Jacksonville District, the following documents:

1960 tax return (Government's Exhibit 1A, R-10, 12, 15, A-18, 19, 20, 105)

Consent form 872 regarding the 1960 return (Government's Exhibit 1B, R-10, 12, 14, 15, 17, A-18, 19, 20, 21, 108)

1961 tax return (Government's Exhibit 2A, R-12, 14, A-26, 28, 186)

Consent form 872 regarding the 1960 return (Government's Exhibit 1C, R-12, 14, 15, 17, A-19, 20, 21, 109)

Form 872 further extension on the 1960 return (Government's Exhibit 1D, R-14, 15, 17, A-20, 21, 110)

Form 872 extension regarding the 1961 return (Government's Exhibit 2B, R-12, 19, 20, A-19, 22, 23, 111)

Letter mailed to the Petitioner 11/30/64 concerning form 872 on the 1960 return (Government's Exhibit 2C, R-12, 19, 20, A-19, 22, 23, 112)

Petitioner's counsel moved the Court to be allowed to argue the motion to suppress such documents outside the presence of the jury, which motion was denied (R-10, 15, 16, A-17, 20, 21), upon the ground that such records were official and could not be suppressed under any circumstances (R-17, A-21). The Court then announced that it would hear Petitioner's motion to suppress such evidence later on (R-17, 18, A-22); but never did.

The Government, through Internal Revenue Agent Lawless (R-26, A-26), and over Petitioner's objections, was permitted to identify and testify regarding the 1960 tax return (Government's Exhibit 1A, R-14, 27, 28, A-19, 27, 105); 1961 tax return (Government's Exhibit 2A, R-14, 27, 28, 33, A-19, 27, 30, 106); form 872 which extended the period of the Statute of Limitations on the 1960 return (Government's Exhibit 1C, R-17, 29, 30, A-21, 28, 109); form 872, extending the period of the Statute of Limitations on the 1961 return (Government's Exhibit 2B, R-20, 32, A-23, 30); and form 872, further extending the period of the Statute of Limitations on the 1960 return (Government's Exhibit 1D, R-17, 33, A-21, 30, 110).

Again, motions to suppress were made to exclude the documents and any testimony regarding such documents, on the authority of *Miranda* v. *Arizona*, 86 S.C. 1602 (1966) (R-29, A-28).

In denying the motion, the Trial Judge stated (R-29, A-28):

The Court: I will overrule that. You don't have to advise everybody of his rights every time you ask him questions.

I think we are coming to that pretty quickly if the Supreme Court keeps on.

Mr. Lurie: We have come to it in the case of Miranda vs. Arizona.

The Court: Oh, no. Miranda says, If you arrest a man, you have a collar on him, you can't ask him any questions. That is all it says.

Internal Revenue Agent Lawless testified that on October 30, 1964, he interviewed the Defendant, who was at that time incarcerated in the Florida State Penitentiary (R-35, A-31), for the purpose of determining if the 1960 return (Government's Exhibit 1A, R-13, 14, A-19, 105) was prepared by the Defendant and to obtain Defendant's consent in writing to extend the Statute of Limitations on the 1960 return dated March 31, 1961. That at such interview, the Defendant identified the 1960 tax return and the signature thereon as his (R-27, 28, A-27) and also signed form 872 extending the limitation period on the 1960 return (Government's Exhibit 1C, R-17, A-21), thereby giving the Government additional time to investigate the return and determine the proper tax liability; although no criminal investigation was being conducted at that time (R-29, 30, A-28).

Agent Lawless further testified that on March 2, 1965, he again interviewed the Defendant at the Florida State Prison (R-31, A-29), at which time the Defendant identified the 1961 tax return (Government's Exhibit 2A, R-14, A-19, 106) and the signature thereon as his (R-34, A-30) and executed another 872 form (Government's Exhibit 1D,

R-15, 17, 33, A-20, 21, 30) again extending the Statute of Limitations on the 1960 return (Government's Exhibit 1A, R-14, 27, 28, A-19, 27, 105) and signed consent form 872 extending the limitation period on his 1961 tax return (Government's Exhibit 2B, R-20, 32, A-23, 30).

Agent Lawless candidly admitted on cross-examination that, when he interviewed the Defendant on October 30, 1964, and again on March 2, 1965, there was a possibility of a criminal violation although he did not advise the Defendant that he did not have to answer any questions or sign any documents that may tend to incriminate him or, if the Defendant did sign any documents or answer any questions, they may be used against him at some other time (R-35, A-31), that he did not advise the Defendant he was entitled to have a lawyer before being questioned (R-36, 41, 42, A-32, 34, 35).

However, eight (8) days later, on March 10, 1965, agent Lawless referred Defendant's case to the Internal Revenue Intelligence Division as involving indications of fraud (R-46, 47, A-37). On June 9, 1965, agent Lawless, and agent Schilling, of the Intelligence Division, sought to again interview the Defendant but, when the Defendant was advised of his constitutional rights (for the first and only time), the Defendant stated he preferred not to talk and the agents left (R-48, A-38).

The opinion of the United States Court of Appeals, Fifth Circuit (A-6) recites, among other things:

> "* * * The evidence clearly reflects that until March 10, 1965, when appellant's case was initially referred to agents of the Intelligence Division, the inquiry involving appellant's tax returns represented no more

than a routine civil tax investigation. Indeed, it was not until November 23, 1965, over eight months later, that an indictment was returned charging appellant with the filing of a fraudulent claim. No arrest warrant was executed until April 21, 1966. At both of the interviews in question, appellant was fully informed of the Government's concern with the accuracy of his tax returns and he voluntarily cooperated with the investigating agent, there being no misrepresentation, fraud, deceit, or misconduct employed to gain such cooperation."

A careful study of this opinion will reflect without dispute that the United States Court of Appeals, Fifth Circuit, failed to give any consideration to the Defendant's privilege against self-incrimination under the Fifth Amendment and the Defendant's right to counsel under the Sixth Amendment.

(f) * * *

(g) **The Argument as to Question I**

Agent Lawless interviewed the Defendant for the first time on October 30, 1964, at the Florida State Penitentiary to obtain the consent for extending the time for assessment of the 1960 return dated March 31, 1961 (Government's Exhibit 1A, R-14, A-19, 105). The purpose of obtaining the consent was not to extend the Stafute of Limitations as advanced by Agent Lawless, but a trick and device in and by which he would obtain a sample of the Defendant's handwriting for criminal prosecution. The purpose of the third visit to the Defendant on June 9, 1965, by Agents Lawless and Schilling was to have a witness to the Defendant's signature.

It is obvious that the Government, in order to prove their case, needed the Defendant's handwriting sample to compare it with the endorsement on the 1960 refund check (Government's Exhibit 3, R-54, A-41, 107) and the 1960 and 1961 returns (Government's Exhibits 1A, 2A, R-14, A-19, 103, 106), which now takes us to Assignment of Error 1 as to whether the Court erred in admitting into evidence the testimony of agent Lawless and the documents obtained by him from the Defendant while incarcerated in Raiford State Prison.

Miranda v. Arizona, 86 S.C. 1602 (1966), states as follows:

> "(3-9) Our holding will be spelled out with some specificity in the pages which follow but briefly stated it is this: the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. *By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.* As for the procedural safeguards to be employed, unless other fully effective means are devised to inform accused persons of their right of silence and to assure a continuous opportunity to exercise it, the following measures are required. Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive

effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently. If, however, he indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking there can be no questioning. Likewise, if the individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him. The mere fact that he may have answered some questions or volunteered some statements on his own does not deprive him of the right to refrain from answering any further inquiries until he has consulted with an attorney and thereafter consents to be questioned." (Emphasis added.)

The Argument as to Question II

The Court deprived the Petitioner of a fair and impartial trial guaranteed to him under the Sixth Amendment of the Constitution of the United States in refusing throughout the course of the entire trial to hear a motion to suppress the evidence as provided in Rule 41(e) of the Federal Rules of Criminal Procedure.

In challenging the legality of the evidence and how it was obtained, counsel repeatedly moved to suppress such evidence. The trial judge stated (R-16, A-21):

> The Court: It is too late now. I will hear it during the course of the trial. You can do it later on to suppress it. The evidence will probably come in.

In denying the Petitioner the right to a hearing on a motion to suppress outside the presence of the jury and without ruling on such motion prior to the case being submitted to the jury was highly prejudicial. The jury

was able to hear throughout the testimony of certain Government witnesses that the Petitioner was incarcerated in the Florida State Penitentiary for another offense, and that to deny him a motion to suppress outside their presence and hearing, certainly denied the Petitioner his right to a fair and impartial trial.

It is extremely essential that this Court take notice that Mr. Lurie was appointed by the Court on May 4, 1966, to represent the Petitioner. That it was not until June 6, 1966, that the Court ordered discovery in the case and the trial was held on the 22nd day of June, 1966. That between the time of obtaining the documents from the Government and proceeding to trial, there was insufficient time to prepare a written petition for hearing to suppress such evidence prior to the date of trial. Certainly, under these circumstances, it was an abuse of discretion for the trial Court not to hear the Petitioner's ore tenus motion to suppress the evidence on behalf of such Petitioner.

Conclusion

The Petitioner, ROBERT T. MATHIS, SR., is clearly entitled, as demonstrated under the foregoing specifications of error, to a judgment of acquittal or, in the alternative, to a new trial.

Respectfully submitted.

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Certificate of Service

The undersigned counsel of record for the Petitioner hereby certifies that a true and correct copy of the Brief of the Petitioner on the Merits was furnished by air mail, by depositing same in a United States mailbox, with first class postage prepaid, addressed to counsel for the Respondent, the Honorable Erwin N. Griswold, Solicitor General, Department of Justice, Washington, D.C. 20530, on this 15th day of January, 1968.

NICHOLAS J. CAPUANO

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No. 726

In the Supreme Court of the United States

OCTOBER TERM, 1967

ROBERT T. MATHIS, SR., PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES

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BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the court of appeals (A. 6–8) is reported at 376 F. 2d 595.

JURISDICTION

The judgment of the court of appeals was entered on April 28, 1967, and a petition for rehearing was denied on May 25, 1967 (A. 9). The petition for a writ of certiorari was filed on June 26, 1967. Certiorari was granted on October 16, 1967 (389 U.S. 896). The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether statements and documents obtained by an Internal Revenue Agent from petitioner while he was confined in a State penitentiary are inadmissible in evidence because petitioner was not advised of his constitutional rights.

2. Assuming that the statements were improperly admitted in evidence, whether the error was harmless.

3. Whether petitioner was deprived of a fair trial because the district court refused to interrupt the trial in order to hold a suppression hearing outside the presence of the jury.

STATUTE INVOLVED

18 U.S.C.:

> 287. *False, fictitious or fraudulent claims*
>
> Whoever makes or presents to any person or officer in the civil, military, or naval service of the United States, or to any department or agency thereof, any claim upon or against the United States, or any department or agency thereof, knowing such claim to be false, fictitious, or fraudulent, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

STATEMENT

Petitioner was convicted by a jury in the United States District Court for the Southern District of Florida on two counts charging that he knowingly filed false claims against the government, in violation of 18 U.S.C. 287. He was sentenced to 30 months' imprisonment on each count, the sentences to run concurrently (A. 4).

The false claims charged in the indictment were claims for refunds made on petitioner's individual income tax returns (Form 1040A) for 1960 and 1961. Petitioner's return for 1960 was filed in the name of Robert Theodore Mathis, Sr., 244 Palmetto Avenue, Winter Haven, Florida. It reports wages of $4,800 from the "J. W. Johnson Construction Co., Newark 5, New Jersey," lists seven dependent children, and claims a refund of $885.60—the amount reported as taxes withheld by the employer (Govt. Ex. 1–A, A. 19, 105). A refund check in the amount of $885.60 was mailed to petitioner at the above address in April 1961 and negotiated by him (Govt. Ex. 3, A. 41–42, 107). The return for 1961 was filed in the name of Robert T. Mathis, 1710 Broxey Court, Winter Haven, Florida. It reports wages of $9,600 from the "Johnson Construction Company, Newark, N.J.," lists six dependent children, and claims a refund of $931.20 in taxes withheld by the employer (Govt. Ex. 2–A, A. 19, 106).[1]

The records of the Social Security Administration showed that petitioner had earnings for Social Security purposes from the U.S. Army for the first nine

[1] No refund check with respect to this return was offered in evidence, and it is unlikely that a refund check was ever issued because the information on the return indicated a balance due rather than a refund. After subtracting a standard deduction of $500 and seven personal exemptions totalling $4,200, the return shows taxable income of $4,900. The tax on this amount for 1961 was $1,074—$142.80 in excess of the amount claimed as taxes withheld by the employer. Section 287 of Title 18 U.S.C., by its terms, does not require proof that the individual received any satisfaction on his false claim.

months of 1960, but no earnings were reported for the remainder of 1960 or for the entire year 1961 (A. 81). An Internal Revenue Agent searched the official records pertaining to incorporated and unincorporated businesses in Essex County, New Jersey, and the Newark telephone directories for the years 1960–1962 and could find no listing for a J. W. Johnson Construction Company (A. 59–60).[2] And two acquaintances of petitioner, who had known him since childhood, testified that they saw him in Winter Haven at least two or three times a week during the latter part of 1960 and throughout 1961 and that he was not absent from the city for any extended time during that period (A. 44, 48–49).

Petitioner did not testify at trial and did not offer any evidence in his defense. The sole theory of his defense, as it appears in the record, was that the government had not proved by admissible evidence that he had filed the false tax returns.

The government's evidence showed that petitioner had admitted to an Internal Revenue Agent that he had filed the tax returns (A. 27–28, 30) and that petitioner had executed consent forms extending the statute of limitations for determining his tax liability for 1960 and 1961 (Govt. Ex. 1–C, A. 21, 109; Govt. Ex. 1–D, A. 21, 110; Govt. Ex. 2–B, A. 23, 111).[3] The

[2] The Revenue Agent also checked the Newark City Directories for 1957, 1958, 1964, and 1965 (no Directories were published in the intervening years) and could find no record of a J. W. Johnson Construction Company (A. 59–60).

[3] An assessment of tax must be made within three years after the return was filed; early returns are considered as filed on the last day prescribed for filing, normally April 15 (26 U.S.C.

government's handwriting expert compared the signatures on the consent forms with the signatures on the income tax returns and the refund check and testified that they were all written by "one and the same writer" (A. 85–86). The government also introduced evidence that petitioner had attempted to file two income tax returns for 1962—one in the name of "Larry L. Mathis" and one in the name of "R. T. Mathis"—both of which claimed refunds for taxes allegedly withheld by a New York construction company (Govt. Ex. 10, A. 78, 114, 119). The record shows that petitioner was in custody on State charges during June–December 1962 (A. 69), and indicates that he may have been in custody or on bail during the first half of that year (A. 49–51).

Petitioner moved to strike the testimony of the Revenue Agent and the handwriting expert on the grounds that his oral admissions and his signatures on the consent forms were obtained from him while he was incarcerated in the Florida State Penitentiary and that he had not been advised of his constitutional rights (A. 39, 90).

Revenue Agent John Lawless testified that his assignment was to determine the correct tax on the 1960 and 1961 returns which apparently had been filed by petitioner; he was not a criminal investigator (A. 28, 37). He visited petitioner at the penitentiary on Octo-

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6501(a), (b)(1)). The taxpayer and the Secretary or his delegate may agree to an extension of the period for assessment of tax (26 U.S.C. 6501(c) (4)). Taxpayers signify their consent to such an extension by executing Form 872, which was used in this case.

ber 30, 1964, to find out whether petitioner had filed the tax returns and, if so, to have him execute a consent form for an extension of the statute of limitations on the 1960 tax (A. 27). Petitioner acknowledged that he had filed the 1960 return, and he signed the consent form (A. 27–29). Lawless made a second visit to the penitentiary on March 2, 1965, to obtain petitioner's consent to an extension of the statute of limitations on the 1961 tax and to a further extension on the 1960 tax. Petitioner signed the consent forms and also acknowledged that he had filed the 1961 return (A. 29–30). The only matters discussed at these two interviews were whether petitioner had filed the returns and whether he would agree to extending the statute of limitations. On each occasion, Lawless explained the purpose of the consent form to petitioner and advised him that he was not required to sign it, but he did not further advise petitioner of his rights (A. 29, 31–32, 34–35). Lawless referred the case to the Intelligence Division for a criminal investigation on March 10, 1965 (A. 37).

The district court denied petitioner's motions to strike the testimony of Agent Lawless and the handwriting expert (A. 39, 90); and the court of appeals affirmed the conviction (A. 6–9).

SUMMARY OF ARGUMENT

I.

Petitioner's statements and his signatures on the consent forms were obtained by an Internal Revenue Agent during a routine civil investigation of petitioner's income tax liability. The fact that petitioner

was serving a State sentence when the agent interviewed him does not bring the case within the scope of the rules in *Miranda* v. *Arizona,* 384 U.S. 436. The safeguards there announced were designed to dispell certain compelling pressures, incident to the type of custodial interrogation exemplified by that case, which tend to inhibit the effective exercise of the right to remain silent. Although petitioner was interviewed while he was incarcerated in a State penitentiary, there was no semblance of deception or of pressure calculated to cause him to speak against his will. Unlike the defendants in *Miranda* and its companion cases, petitioner was not taken from familiar surroundings and subjected to police interrogation designed to elicit incriminatory statements for use in a criminal prosecution. The State sentence which petitioner was serving was wholly unrelated to the subject of the interviews. There was no reason for him to believe that anything he told or refused to tell the Revenue Agent could have had any effect on his confinement, and there was nothing in the agent's purpose or his manner which might be characterized as having a potential for undermining petitioner's desire to remain silent.

Petitioner's statements were made in response to the agent's question whether he had filed a particular tax return—a question which is an obvious and essential preliminary inquiry in all civil tax interviews between a taxpayer and a Revenue Agent. To apply the *Miranda* safeguards to that question, asked in the course of a civil investigation, merely because the individual happens to be in prison would be to extend the

application of the rules far beyond the policies on which they are based and to construct needless impediments to the government's ability to secure information of the type routinely sought from all citizens.

Petitioner also objects to the fact that the forms which he signed in the agent's presence—consents to the extension of the statute of limitations governing his tax liability—were utilized by the government's expert witness as handwriting exemplars. This was plainly proper under this Court's ruling in *Gilbert* v. *California*, 388 U.S. 263.

II

Even assuming that petitioner's statements were improperly admitted in evidence, the error was harmless under the test announced in *Chapman* v. *California*, 386 U.S. 18. *Chapman* does not require a finding that the jury did not consider the evidence; the test may be satisfied by a finding, beyond a reasonable doubt, that the extent to which the evidence is likely to have influenced the verdict is so negligible that reversal is not required in order to maintain the integrity of the constitutional protection involved. Petitioner's statements were offered only to prove that he had filed the tax returns. The government's other evidence, which was wholly uncontradicted, left the jury no reason to doubt that fact. The government's handwriting expert testified unequivocally that the same person who had signed the tax returns had also signed the consent forms which petitioner executed at the Revenue Agent's request. But, more than that, all

of the circumstances established by the evidence, including the internal evidence provided by the details of petitioner's tax returns, showed beyond peradventure that the scheme to defraud the revenue could only have been fostered by petitioner.

III

A separate hearing outside the presence of the jury to determine the admissibility of evidence under the *Miranda* rules is not invariably required. The policy of giving full protection to the privilege against self-incrimination may be satisfied (as it was in the present case) where the evidence at trial discloses all of the relevant facts and where the trial judge makes a finding, before the case is submitted to the jury, that the manner in which the evidence was obtained did not violate the defendant's Fifth Amendment rights. Any prejudice which may have resulted from the jury's learning that petitioner was incarcerated in a State prison was the result of his own tactics. Petitioner did not move before trial to suppress the evidence obtained by the Revenue Agent, although he knew well in advance of trial that the government intended to use it. When petitioner moved to suppress the evidence at trial, he did not inform the judge why a hearing outside the presence of the jury was desirable. And he disregarded the opportunity to cure any possible prejudice resulting from testimony as to his imprisonment by failing to request specific cautionary instructions.

ARGUMENT

I. THE ADMISSION INTO EVIDENCE OF STATEMENTS AND DOCUMENTS OBTAINED FROM PETITIONER DURING A CIVIL TAX INVESTIGATION DID NOT VIOLATE HIS PRIVILEGE AGAINST SELF-INCRIMINATION

The principal issue in this case is whether statements and documents obtained by an Internal Revenue Agent conducting a routine civil investigation of petitioner's tax returns are rendered inadmissible by the agent's failure to advise petitioner, who was then confined in a State prison, that he was not required to answer any questions and that he was entitled to the presence of an attorney. Over petitioner's objections at trial, the agent was permitted to testify that petitioner acknowledged that he had filed the tax returns and that the signatures thereon were his, and the consent forms signed by petitioner were admitted into evidence and used as exemplars by the government's handwriting expert. Petitioner contends that the admission of this evidence violated his privilege against self-incrimination because he was in custody at the time it was obtained and he was not first advised of his constitutional rights as prescribed by *Miranda* v. *Arizona*, 384 U.S. 436.[4] We submit, however, that this case

[4] "Constitutional rights" and other similar phrases are used herein as shorthand references for the full text of the warnings which must be given an individual who is taken into custody. *Miranda* holds that he must be warned, prior to any questioning, that he has the right to remain silent; that anything he says can be used against him in a court of law; that he has the right to the presence of an attorney; and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires. 384 U.S. at 479; see *id.* at 444.

does not present any of the circumstances which were found by this Court in *Miranda* to jeopardize the effective exercise of the privilege against self-incrimination, and that the application of the *Miranda* rules to the case at bar is neither required nor appropriate.

A. THE REVENUE AGENT WAS NOT REQUIRED TO COMPLY WITH THE *MIRANDA* SAFEGUARDS IN THE CIRCUMSTANCES OF THIS CASE

1. We assume, with petitioner, that under this Court's decisions [5] petitioner had the right to refuse to answer the agent's questions on the ground that his responses might be used against him in a criminal prosecution. When an individual elects to respond to governmental inquiries, however, nothing in those decisions precludes the admissibility of such statements,[6] provided they were given "freely and voluntarily without any compelling influences." [7] The critical holding in *Miranda* is that at a certain point in the investigation of a criminal offense—when an individual "has

[5] *Marchetti* v. *United States*, No. 2, this Term (decided January 29, 1968); *Grosso* v. *United States*, No. 12, this Term (decided January 29, 1968); *Haynes* v. *United States*, No. 236, this Term (decided January 29, 1968); *Garrity* v. *New Jersey*, 385 U.S. 493; *Spevack* v. *Klein*, 385 U.S. 511; *Miranda* v. *Arizona*, 384 U.S. 436; *Albertson* v. *Subversive Activities Control Board*, 382 U.S. 70; *Malloy* v. *Hogan*, 378 U.S. 1, 6–8, 11–14.

[6] The following discussion deals primarily with petitioner's oral admissions that he filed the tax returns, on the theory that the inapplicability of the *Miranda* safeguards in the circumstances under which the statements were elicited should be conclusive on the question whether the consent forms were properly admitted. The admissibility of the consent forms under the holding in *Gilbert* v. *California*, 388 U.S. 263, is discussed *infra* at pp. 19–20.

[7] *Miranda* v. *Arizona*, 384 U.S. 436, 478.

been taken into custody or otherwise deprived of his freedom of action in any significant way"—the authorities must advise the individual of his right to remain silent and comply with other "procedural safeguards effective to secure the privilege against self-incrimination" in order to preserve the admissibility of any statement made during subsequent custodial interrogation (384 U.S. at 444). The *Miranda* opinion itself indicates that procedural safeguards are needed at this stage of a criminal investigation in order to dispell certain "compelling pressures" (*id.* at 467) which tend to deprive the individual of his ability to make and enforce a decision to remain silent.[8] When an individual is arrested by the police in connection with an unsolved crime, as were the defendants in *Miranda* and its companion cases, it is probable that subsequent interrogation will be designed to elicit incriminatory statements to be used in a criminal prosecution and that in pursuing this objective the authorities may employ techniques of interrogation, including extended questioning, calculated to defeat the individual's will to resist (384 U.S. at 455).[9] The individual's isolation

[8] See *Miranda* at 461: "An individual swept from familiar surroundings into police custody, surrounded by antagonistic forces, and subjected to the techniques of persuasion described above cannot be otherwise than under compulsion to speak." Compare *In re Gault*, 387 U.S. 1, 47.

[9] Compare *Escobedo* v. *Illinois*, 378 U.S. 478, 485, "Petitioner had become the accused, and the purpose of the interrogation was to 'get him' to confess his guilt * * *," with *Miranda* at 444 n.4, "This [when a person has been taken into custody] is what we meant in *Escobedo* when we spoke of an investigation which had focused on an accused." See also *Miranda* at 465; *Spano* v. *New York*, 360 U.S. 315, 323–324.

in a police-dominated atmosphere enhances the effectiveness of these practices, for he is deprived of the reassurance of his familiar surroundings and forcefully impressed with his interrogators' control of his future liberty (384 U.S. at 454–455).

The extent to which this combination of factors is found to exist should determine whether the *Miranda* safeguards are required in situations not presented by that case. The instant case is factually distinguishable from *Miranda* in two respects: Petitioner's confinement was not the result of any action taken by the agent who interviewed him;[10] and an income tax investigation—unlike the type of local crimes involved in *Miranda*, where the investigation is directed at determining the identity of an unknown offender—is usually focused from its inception on the ordinary civil obligations of the taxpayer whose return is being audited.[11] The relevant inquiries in this case, therefore, are whether the Revenue Agent was conducting

[10] In *Westover* v. *United States*, decided with *Miranda*, FBI agents interrogated and obtained a confession from a suspect who was being held in a local police station and who had been interrogated for two days, without being advised of his rights, by local police in the same stationhouse. Despite the fact that the FBI agents had advised the suspect of his rights, the Court held that the impact on the suspect was that of a continuous period of questioning from which the compelling pressures of the local interrogation had not been sufficiently removed; the Court specifically confined its holding to the particular facts of that case. See *Miranda* at 494–497; cf. *Clewis* v. *Texas*, 386 U.S. 707.

[11] See, *e.g.*, *Kohatsu* v. *United States*, 351 F. 2d 898 (C.A. 9), certiorari denied, 384 U.S. 1011; *Rickey* v. *United States*, 360 F. 2d 32 (C.A. 9), certiorari denied, 385 U.S. 835.

a criminal investigation at the time petitioner's statements were obtained, and whether the circumstances of petitioner's confinement served to undermine his will to refrain from answering the agent's questions.

2. It is clear from the record that petitioner was not the subject of a criminal investigation at the time his statements were made. Agent Lawless was not a criminal investigator; it was his duty, as soon as he found "definite indications of fraud or criminal potential," to refer the case to the Intelligence Division for criminal investigation (A. 37). Although he did refer the case on March 10, 1965, the interviews with petitioner preceded that reference.[12]

As outlined above (see statement, pp. 5–6), Lawless went to the penitentiary on October 30, 1964, for the sole purposes of determining whether the returns assigned to him had been filed by petitioner[13] and of obtaining his signature on a standard consent form for the 1960 return—a document which was efficacious only if petitioner had filed the return and which in no way enlarges the signer's criminal liability (A.

[12] The difference in procedures employed by the Internal Revenue Service for civil and criminal investigations is shown in the record by the fact that, after Lawless referred the case for criminal investigation, an Intelligence Division agent visited petitioner and advised him of his constitutional rights before asking any questions (A. 38). On this occasion, petitioner stated that "he preferred not to talk" (*ibid*).

[13] Lawless went to the penitentiary prior to making any investigation of the content of the returns (A. 31). Upon being assigned to determine the correct tax on the 1960 and 1961 returns filed by Robert Theodore Mathis, Sr. and Robert T. Mathis, his first step was to obtain the taxpayer's consent to an extension of the statute of limitations on the 1960 return so that any deficiency might be assessed (A. 28; note 14, *infra*).

28, 31).[14] At that time there was "no definite indication of anything which would cause [him] to refer it for [criminal] investigation" (A. 31).

Agent Lawless thereafter wrote to petitioner, enclosing additional consent forms for his signature (A. 33). When petitioner failed to execute and return the forms, Lawless again visited the penitentiary, on March 2, 1965, in order to obtain petitioner's consent to an extension of the statute of limitations on the 1961 tax and to a further extension on the 1960 tax (A. 29–30).[15] On this occasion Lawless also asked whether petitioner filed the 1961 return which had been assigned to him (A. 30). Lawless' investigation to this point showed "nothing conclusive" and he "had no way of knowing there would be a criminal prosecution" (A. 34).[16]

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[14] The statute of limitations for an assessment of tax on an individual return for 1960 expired on April 15, 1964 (26 U.S.C. 6501 (a), (b)). By an earlier consent form, executed on March 31, 1964, petitioner had agreed to an extension of the statute until December 31, 1964—within two months of Lawless' first visit to the penitentiary (Govt. Ex. 1–B, A. 21, 108). The record does not show how this consent form was obtained (See A. 35–36).

[15] The statute of limitations for an assessment of tax on a 1961 return would have expired on April 15, 1965—within 45 days of Lawless' March 1965 visit to the penitentiary (26 U.S.C. 6501(a), (b)). The extension on the 1960 return, which petitioner agreed to in October 1964, would have expired on June 30, 1965 (Govt. Ex. 1–C, A. 21, 109).

[16] The record shows that at some time in 1964 a preliminary inquiry was made in Newark, New Jersey, regarding the existence of a Johnson Construction Company, but there is no evidence that any findings of this inquiry to the extent that it failed to reveal any firm by that name, were disclosed to Agent Lawless (see A. 61–63). The other evidence introduced against

The only evidence which petitioner cites (Br. 7) to support his apparent contention that Agent Lawless was conducting a criminal investigation is Lawless' testimony that there was a "possibility" that he would refer the case for a criminal investigation (A. 31). This possibility, however, is inherent in every civil inquiry seeking to verify information which an individual is required by law to report truthfully to the government. We find nothing in the *Miranda* opinion which requires the government, in the course of a civil tax audit, to advise a taxpayer whom it finds in custody of his constitutional rights prior to requesting the taxpayer's consent to an extension of time for determining his civil tax liability. Conceivably, Agent Lawless could have limited his interviews to these requests, relying thereafter on intuition, or perhaps the advice of a handwriting analyst, to assure himself that he had obtained the consent of the taxpayer who had filed the returns. But since he was not pursuing a criminal investigation, there was no reason for Lawless to avoid putting this obvious and routine question directly to petitioner.

3. The record plainly shows, moreover, that petitioner was not subjected to the "menacing police inter-

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petitioner—a letter which he wrote to his wife showing that he attempted to file two tax refund claims for 1962 (Gov. Ex. 10, A. 78, 114–120)—was received from State authorities by Agent Derry of the Intelligence Division in February 1963 and retained by him in his office in Orlando, Florida, until June 1965, when he gave it to Agent Schilling of the Intelligence Division, who had been assigned to the Mathis case; it was not given to Agent Lawless, whose office was in Jacksonville, Florida, about 100 miles north of Orlando (A. 76–77).

rogation procedures" which lie at the root of the *Miranda* decision (384 U.S. at 457). On each visit to the penitentiary, Lawless asked petitioner only two questions: whether he had filed a particular tax return and whether he would agree to an extension of the statute of limitations. The difference between these interviews and the interrogation involved in *Miranda* and its companion cases[17] is too apparent to require argument. Indeed it is difficult to conceive of a situation in which an individual's confinement played a more insignificant part in his decision to answer the question of a government agent. Although most types of custody share certain similarities, the Court's analysis in *Miranda* indicates a finding that the type of custody involved in that case, combined with police interrogation, produced compelling pressures on the individual to speak against his will. There is no parallel here.

The Court emphasized that the defendants in *Miranda* and its companion cases were "swept from familiar surroundings into police custody" (384 U.S. at 461). Any effect which this dislocation might have on an individual's capacity to resist questioning is lacking in this case; petitioner was interviewed in surroundings which had been familiar to him for twenty months prior to Agent Lawless' first visit (see A. 69). Moreover, when a person is taken into custody and thereafter questioned about a criminal offense, he infers that there is some connection between his confinement and the suspicion that he was

[17] See *Miranda* at 456–457, 491–499.

involved in that crime. He is likely to believe, even in the absence of express statements by the police,[18] that his refusal to talk will heighten their suspicion, and consequently that he might obtain his immediate freedom either by admitting his guilt or by concocting an elaborate denial—which often entangles him in a web of contradictions that leads ultimately to a confession.[19] In the present case, however, petitioner could hardly believe that anything he might say to Agent Lawless could relieve him of any of the consequences of his State sentence. The fact that he was interviewed while in custody could have no special significance for petitioner, because anyone who wanted to talk with him had to come to the penitentiary.

4. It should be emphasized, finally, that nothing in the foregoing analysis would immunize "prison" interrogation from procedural safeguards in all cases. An individual's confinement in a penitentiary, combined with police interrogation seeking to elicit incriminatory statements for use in a criminal prosecution, may in some circumstances present the same "compelling pressures" which were found in *Miranda* to inhere in stationhouse interrogation. We find nothing in the rationale of *Miranda,* however, which indicates that an individual's confinement, in and of itself, uniformly requires the application of special procedural safeguards before the government may seek to obtain information from him. Although the point is not settled, *Miranda* may mean that in situations

[18] *Miranda* at 454; see *id.* at 461.

[19] See *Miranda* at 451–452; *Escobedo* v. *Illinois*, 378 U.S. 478; 482–483.

squarely within the framework of that case a court need determine only whether the warnings were given and need not inquire whether the particular interrogation was likely to compel the defendant to speak against his will.[20] But where the issue is whether the *Miranda* safeguards should be required in significantly different circumstances, the purpose and manner of the questioning, its duration, and the effect of the subject's confinement on his ability to resist this type of questioning are all relevant, as they were in *Miranda,* to the determination whether the situation is characterized by "inherently compelling pressures." Whatever facts may be presented by other instances of prison questioning, we submit that the circumstances of this case exhibit no "pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely" (*Miranda* at 467).

B. THE CONSENT FORMS USED AS EXEMPLARS BY THE GOVERNMENT'S HANDWRITING EXPERT AT TRIAL ARE ADMISSIBLE UNDER THE DOCTRINE OF *GILBERT* v. *CALIFORNIA*, 388 U.S. 263

Presumably in support of his position that Agent Lawless was conducting a criminal investigation, petitioner contends (Br. 8) that Lawless asked him to sign the consent forms in order to obtain a sample of his handwriting for use in a criminal prosecution. This contention is entirely without foundation in the

[20] To the extent that *Miranda* has not foreclosed this inquiry, we would argue that, even if the warnings were required, there was nothing in the agent's question or the way in which it was asked which could conceivably have influenced petitioner to speak against his will.

record, and it appears to be an afterthought, since it was not raised either in petitioner's brief in the court of appeals or in the petition. But even if petitioner's signatures on the consent forms were obtained for the purpose of using them as handwriting exemplars at trial (which we do not concede) it is clear that the admission of the forms in evidence did not violate petitioner's privilege against self-incrimination. In *Gilbert* v. *California,* 388 U.S. 263, decided last Term, this Court held that "[a] mere handwriting exemplar, in contrast to the content of what is written, like the voice or body itself, is an identifying physical characteristic outside [the Fifth Amendment's] protection" (*Id.* at 266–267). If, as *Gilbert* holds, petitioner could not have refused to give handwriting exemplars on self-incrimination grounds, it follows that procedural devices to safeguard the exercise of the privilege, such as the *Miranda* warnings, are not applicable. The consent forms were used at trial solely for the purpose of handwriting comparison, and they contained no communication relevant to the issues in the criminal prosecution.[21]

[21] Neither the consent forms themselves (Govt. Ex. 1–C, A. 20–21, 109; Govt. Ex. 1–D, A. 20–21, 110; Govt. Ex. 2–B, A. 22–23, 111) nor the testimony concerning their execution (A. 28–30, 32, 34) contains any statement that, by signing the forms, petitioner acknowledged that he had filed the particular returns which were introduced at trial. The only reasonable inference that can be drawn from the execution of a consent form is that the taxpayer agrees to an extension of time for the computation of tax on *his* return. If a deficiency is thereafter assessed, it is open to the taxpayer to claim that he did not file the return on which the assessment is based.

C. THE APPLICATION OF THE *MIRANDA* RULES TO CASES OF THIS KIND WOULD NEEDLESSLY HAMPER AGENCIES OF GOVERNMENT IN SECURING INFORMATION OF THE TYPE ROUTINELY SOUGHT FROM ALL CITIZENS

In view of the absence of compelling pressures on petitioner to answer the Revenue Agent's questions, reversal of the judgment below would seem to depend on a holding that the *Miranda* safeguards are required whenever the government seeks to obtain any information from an individual in prison. We suggest that such a broad holding is not necessary to protect the exercise of the Fifth Amendment privilege.

The 220,000 adult felony offenders in correctional institutions in the United States do not relinquish their contact with the civil functions of government during their confinement. Federal, State, and local governments have established procedures for collection of taxes, registration of automobiles, regulation of buildings and certain licensed businesses, and the satisfaction of claims against the government, to name only a few. In the performance of these functions, government requires certain information which can be obtained most conveniently, or perhaps exclusively, from the individual directly concerned. When the individual is in prison, government has no choice but to deal with him where it finds him. Indeed, an individual's contacts with civil agencies of government may sometimes be increased during his confinement because he often must rely on them to provide welfare payments for his family and to protect his property interests. In some instances a civil agency may have no responsibility for the enforcement of criminal

statutes, although it may make information provided by the individual available to law enforcement agencies. In other instances, like the present case, the agency may also have responsibility for investigating criminal offenses arising under its statutes. But it seems apparent that those situations in which the questioning of a prisoner during a criminal investigation presents inherently compelling pressures can be described with sufficient clarity to permit an appropriate application of the *Miranda* safeguards.

We submit, in brief, that when government is exercising a civil function or pursuing a civil investigation, the mere fact that the individual involved is serving a criminal sentence should not, in and of itself, require the adoption of those procedures which have been deemed necessary in the conduct of a criminal investigation or proceeding. To follow that course would be to apply the rules in disregard of the reasons which underlie them.

II. ASSUMING THAT PETITIONER'S STATEMENTS WERE IMPROPERLY ADMITTED, THE ERROR WAS HARMLESS

If the Court should hold that the admission of petitioner's statements violated his privilege against self-incrimination, we suggest that the error was harmless and does not require reversal of the judgment below. Rule 52(a), Fed. R. Crim. P.[22] Under

[22] Since there is no indication in the record that the statements were involuntary, we assume that a harmless error argument is not foreclosed by the Court's apparent holding that the admission of an involuntary confession may never be considered harmless. See *Chapman* v. *California*, 386 U.S. 18, 42–43 (Stewart, J., concurring).

the standard enunciated in *Chapman* v. *California*, 386 U.S. 18, the admission of evidence in violation of a defendant's constitutional rights may be held to be harmless error only if an appellate court finds beyond a reasonable doubt that the evidence did not contribute to the jury's verdict. We do not read *Chapman*, however, as requiring a finding that the jury disregarded or disbelieved the evidence; if the Court intended to limit harmless error to irrelevant or incredible evidence it could have done so in those terms. That is to say, an error in admitting evidence which serves merely to confirm a fact that is irresistible in view of the other evidence in the case may properly be held harmless without diluting the constitutional protection involved.

Petitioner's statements were offered only to prove that he had filed the tax returns. Since petitioner did not offer any evidence, the extent to which the jury is likely to have relied on the statements depends solely on the strength of the government's other evidence on this issue. The government offered direct evidence that petitioner had filed the returns through the testimony of a handwriting expert. That expert testified unequivocally that the same person who had signed the consent forms (admittedly executed by petitioner) had signed the tax returns and endorsed the 1960 refund check, and he demonstrated the similarities in the signatures to the jury through the use of enlargements of the exhibits (A. 86–89). On cross-examination, petitioner did not attempt to impeach the expert's method of analysis or his qualifications.

In addition, overwhelmingly persuasive circumstantial evidence established an incontestable link between petitioner and the tax returns. The most elementary assumption that can be made about the fraudulent scheme involved in this case is that the person who filed the returns had an economic interest in reporting an address at which he could receive the anticipated refund check. The government's evidence showed that the address reported on the 1961 return was petitioner's address; that the name of the taxpayer's wife was the name of petitioner's wife; and that the taxpayer's Social Security number was petitioner's number.[23] There was also evidence that petitioner had attempted to file two tax refund claims, under different names, for the year 1962.[24] The jury would not have been justified in concluding that this scheme had been fostered by someone other than petitioner who knew petitioner's Social Security number and wife's name; who knew that a fraudulent claim for taxes withheld by the fictitious Johnson Construction Company had succeeded in obtaining a refund check for 1960; who was able to intercept mail addressed to petitioner at two residences in 1960 and 1961; and who was able to cash sizeable checks made out to petitioner in Winter Haven, Florida.

In these circumstances, petitioner's statements that he had filed the tax returns were wholly cumulative and served only to corroborate a fact which the government's other evidence established beyond doubt.

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[23] Compare Govt. Ex. 2-A (A. 106) with Govt. Ex. 10 (A. 78, 116–117) and Govt. Ex. 11 (A. 80, 122).

[24] See Govt. Ex. 10 (A. 78, 114–120).

III. PETITIONER WAS NOT DEPRIVED OF A FAIR TRIAL BY THE TRIAL COURT'S REFUSAL TO HOLD A SUPPRESSION HEARING OUTSIDE THE PRESENCE OF THE JURY

Petitioner apparently contends that the district court deprived him of his constitutional right to a fair trial, or, in the alternative, that it abused its discretion, by (a) refusing to hear his motion to suppress any evidence obtained from him by Agent Lawless, (b) refusing to hold a hearing on the admissibility of such evidence, and (c) refusing to hold a hearing outside the presence of the jury, as a result of which the jury heard testimony that he was incarcerated in the Florida State Penitentiary. These procedural contentions are without merit.

We assume, at the outset, that the constitutionally required procedures for determining the admissibility of statements at trials where the *Miranda* rules apply are the same as, or at least no more exacting than, the procedures required by *Jackson* v. *Denno,* 378 U.S. 368, for statements alleged to have been involuntarily made. In *Pinto* v. *Pierce,* 389 U.S. 31, decided this Term, the Court noted that it "has never ruled that all voluntariness hearings must be held outside the presence of the jury, regardless of the circumstances," and summarized the holding in *Jackson* v. *Denno* as a requirement that a challenged confession may not be introduced without an initial "determination by the trial judge of its voluntariness after an adequate hearing" (*Id.* at 32). It is clear from the record that the examination of Agent Lawless at trial was fully adequate to disclose all of the facts

necessary for the court's determination of the admissibility of the evidence, and petitioner does not contend that he was in any way prevented from making his case. A "hearing," in the sense of a separate proceeding solely on the question of the admissibility of the evidence, is not essential. *Pinto* v. *Pierce, supra.*[25] And the district court, although it reserved judgment on petitioner's motion to suppress the evidence (A. 21), did rule on petitioner's motions to strike the testimony of Agent Lawless (A. 39) and the government's handwriting expert, (A. 90), which were to the same effect and based on the same constitutional grounds as his motion to suppress.[26] Petitioner's argument, therefore, must be premised on the general notions of fairness embodied in the Due Process clause or directed toward the Court's exercise of supervisory power over criminal trials in federal courts. Cf. *Spencer* v. *Texas,* 385 U.S. 554, 565.

Petitioner principally contends that he was unable to obtain a fair trial because the jury learned that he was incarcerated in the Florida State Penitentiary. Whatever prejudice may have resulted from this knowledge, however, was occasioned by petitioner's tactics.

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[25] In *Pinto* v. *Pierce*, the Court stated the principal reason for holding voluntariness hearings outside the presence of the jury: "A confession by the defendant found to be involuntary by the trial judge is not to be heard by the jury which determines his guilt or innocence. Hence, because a disputed confession may be found involuntary and inadmissible by the judge, it would seem prudent to hold voluntariness hearings outside the presence of the jury." 389 U.S. at 32.

[26] The district court also ruled on several objections to the admission of the evidence on constitutional grounds. See A. 20–21, 23, 28.

In the absence of a specific rule establishing procedures for determining the admissibility of defendants' statements, some district courts have entertained pretrial motions to suppress. See Rules 12(b)(1), 41(e), Fed. R. Crim. P. No pretrial motion to suppress was made in the present case. Petitioner directs this Court's attention to the facts that counsel was appointed on May 4, 1966, that discovery was granted on June 6, 1966, and that trial began on June 22, 1966, and claims that there was "insufficient time" between the time when the documents were obtained from the government and trial to prepare a one-page motion to suppress the evidence (Br. 11). Compare Form 16, Fed. R. Crim. P.[27] The conduct of petitioner's counsel at trial, however, refutes any argument that he was previously unaware of the evidence which the government intended to introduce or the circumstances under which it was obtained.[28]

[27] When the court asked why he did not move before trial to suppress the evidence, counsel replied: "We didn't even know what they were going to introduce until now. We couldn't file a motion to suppress" (A. 21). This claim is inconsistent with the record and with petitioner's brief in this Court.

[28] When the government first introduced the consent forms—through the testimony of its first witness, a Revenue official who merely had custody of the documents and who knew nothing about Agent Lawless' interviews with petitioner—counsel objected and told the court, "* * * if it is used for comparison purposes, under the law it is not admissible and I can show that it is not admissible under the law as it stands right now" (A. 18). Again, in the testimony of the same witness, on the same issue, counsel told the court: "* * * This is a question of whether or not they obtained evidence illegally that they are going to use against this man, whether they forced him to

The alternative vehicle for excluding this type of evidence, which petitioner apparently chose to employ, is to move to suppress the statements at the time they are offered at trial. Although petitioner did move to suppress the consent forms, it is doubtful whether he properly moved for a hearing; it is even more doubtful whether he properly moved for a hearing outside the presence of the jury; and it is clear that he did not tell the court why he wanted a hearing outside the presence of the jury. Petitioner's motion consisted of the following statement: "Well, I will move to suppress that [the consent forms] now, and if you want to have a hearing on it, we have got to have it" (A. 21). Previously, when objecting to the admission of the consent forms, counsel had told the court, "Well, it is something I would like to talk about outside the presence of the jury" (A. 18), and "* * * I think we ought to have a hearing outside the presence of the jury" (A. 20). At no time did counsel attempt to advise the court that the defendant was in custody at the time the evidence was obtained and that a hearing outside the presence of the jury would serve either to exclude the evidence or to relieve him of the need to raise the custody issue at trial.[29] In these circum-

incriminate himself" (A. 21); moments later he stated: "I know, Judge, but they are using those signatures to incriminate him, and I am going to show how they received them" (A. 22).

[29] The following colloquy between the trial court and defense counsel at the outset of Agent Lawless' testimony demonstrates that the court had not been advised that petitioner was in prison at the time the evidence was obtained (A. 28):

> Mr. Lurie. If the Court please, at this time I am going to object to any questioning of this man unless * * * the

stances, it cannot fairly be said that the district court abused its discretion by failing to excuse the jury after the trial had begun in order to hold a hearing on petitioner's motion to suppress.

Any prejudice resulting from testimony as to petitioner's imprisonment could have been cured by specific instructions cautioning the jury not to consider that fact as evidence of petitioner's guilt. Cf. *Spencer* v. *Texas, supra,* at 562–563, *Michelson* v. *United States,* 335 U.S. 469, 485. Petitioner failed to request such an instruction, however, and he did not object to the court's failure to caution the jury on the use of this testimony.[30] Furthermore, petitioner did not move for a mistrial on the ground that he was prejudiced by the references to his imprisonment.

Government is prepared to prove that he was advised of his rights.

The COURT. I will overrule that. You don't have to advise everybody of his rights every time you ask him questions. * * *

Mr. LURIE. We have come to it in the case of Miranda vs. Arizona.

The COURT. Oh, no. Miranda says, If you arrest a man, you have a collar on him, you can't ask him any questions. That is all it says.

Mr. LURIE. Well, we will put the collar on him, Judge.

[30] After instructing the jury, the court asked counsel, "Have I overlooked any instruction, gentlemen, that you desire to discuss?" Petitioner's counsel replied, "Not that I know of." (A. 100). The court did instruct the jury that a person in custody has a right to refuse to answer any questions, and that the jury was not to consider petitioner's refusal to discuss the matter with Agent Schilling as evidence of his guilt. A. 97; see A. 38; cf. *Miranda* at 468 n.37.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the court of appeals should be affirmed.

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SUPREME COURT OF THE UNITED STATES

No. 726.—October Term, 1967.

Robert T. Mathis, Sr., Petitioner, *v.* United States. | On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[May 6, 1968.]

Mr. Justice Black delivered the opinion of the Court.

Petitioner was convicted by a jury in a United States District Court on two counts charging that he knowingly filed false claims against the Government in violation of 18 U. S. C. § 287 [1] and sentenced to 30 months imprisonment on each count, the sentences to run concurrently. The frauds charged were claims for tax refunds growing out of petitioner's individual income taxes for 1960 and 1961. Both income tax returns for these two years asserted receipts of income from two different companies which the government agents were unable to locate and which evidence offered tended to show were nonexistent. The amount of income claimed in each tax return was calculated in such way as to show that these two nonexistent employers had withheld wages sufficient to justify substantial refunds to petitioner. The Government paid the 1960 tax refund to petitioner of $885.60 as claimed, but the record fails to show whether the 1961 claimed refund was paid. A part of the evidence on which the conviction rested consisted of documents and

[1] 18 U. S. C. § 287 provides: "Whoever makes or presents to any person or officer in the civil, military, or naval service of the United States, or to any department or agency thereof, any claim upon or against the United States, or any department or agency thereof, knowing such claim to be false, fictitious, or fraudulent, shall be fined not more than $10,000 or imprisoned not more than five years, or both."

oral statements obtained from petitioner by a government agent while petitioner was in jail serving a state sentence. Before eliciting this information, the government agent did not not warn petitioner that any evidence he gave the Government could be used against him, and that he had a right to remain silent if he desired as well as a right to the presence of counsel and that if he was unable to afford counsel one would be appointed for him. At trial petitioner sought several times without success to have the judge hold hearings out of the presence of the jury to prove that his statements to the revenue agent were given without these warnings and should therefore not be used as evidence against him. For this contention he relied exclusively on our case of *Miranda* v. *Arizona*, 384 U. S. 456 (1966). The District Court rejected this contention as did the Court of Appeals in affirming. 376 F. 2d 595. We granted certiorari to decide whether the *Miranda* case calls for reversal. We hold that it does.

There can be no doubt that the documents and oral statements given by petitioner to the government agent and used against him were strongly incriminating.[2] In the *Miranda* case this Court's opinion stated at some length the constitutional reasons why one in custody who is interrogated by officers about matters that might tend to incriminate him is entitled to be warned "that he has the right to remain silent, that anything he says

[2] Internal Revenue Agent Lawless testified that on October 30, 1964, he interviewed petitioner in the Florida State Penitentiary to determine if the 1960 return had been prepared by petitioner and to obtain petitioner's consent in writing to extend the Statute of Limitations on the 1960 return. At this interview petitioner identified the 1960 tax return and the signature thereon as his; he also signed the extension form. Again on March 2, 1965, Agent Lawless interviewed petitioner at the penitentiary, and this time petitioner identified the 1961 tax return and signature thereon as his and signed an extension form for this return.

can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning, should he so desire." 384 U. S., at 479. The Government here seeks to escape application of the *Miranda* warnings on two arguments: (1) that these questions were asked as a part of a routine tax investigation where no criminal proceedings might even be brought, and (2) that the petitioner had not been put in jail by the officers questioning him, but was there for an entirely separate offense. These differences are too minor and shadowy to justify a departure from the well-considered conclusions of *Miranda* with reference to warnings to be given to a person held in custody.

It is true that a "routine tax investigation" may be initiated for the purpose of a civil acton rather than criminal prosecution. To this extent tax investigations differ from investigations of murder, robbery, and other crimes. But tax investigations frequently lead to criminal prosecutions, just as the one here did. In fact, the last visit of the revenue agent to the jail to question petitioner took place only eight days before the full-fledged criminal investigation concededly began. And as the investigating revenue agent was compelled to admit, there was always the possibility during his investigation that his work would end up in a criminal prosecution. We reject the contention that tax investigations are immune from the *Miranda* requirements for warnings to be given a person in custody

The Government also seeks to narrow the scope of the *Miranda* holding by making it applicable only to questioning one who is "in custody" in connection with the very case under investigation. There is no substance to such a distinction, and in effect it goes against the whole purpose of the *Miranda* decision which was designed to give meaningful protection to Fifth Amendment rights.

We find nothing in the *Miranda* opinion which calls for a curtailment of the warnings to be given persons under interrogation by officers based on the reason why the person is in custody. In speaking of "custody" the language of the *Miranda* opinion is clear and unequivocal:

> "To summarize we hold that when an individual is taken into custody, or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning, the privilege against self-incrimination is in jeopardy." 384 U. S., at 479.

And the opinion goes on to say that the person so held must be given the warnings about his right to be silent and his right to have a lawyer.

Thus, the courts below were wrong in permitting the introduction of petitioner's self-incriminating evidence given without warning of his right to be silent and right to counsel. The cause is reversed and remanded for further proceedings consistent with this opinion.

It is so ordered.

MR. JUSTICE MARSHALL took no part in the consideration or decision of this case.

SUPREME COURT OF THE UNITED STATES

No. 726.—October Term, 1967.

Robert T. Mathis, Sr., Petitioner, v. United States. | On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[May 6, 1968.]

Mr. Justice White, with whom Mr. Justice Harlan and Mr. Justice Stewart join, dissenting.

I dissented from the Court's decision in *Miranda* v. *Arizona*, 384 U. S. 436 (1966), because I thought that the Court had accepted an interpretation of the Fifth Amendment having "no significant support in the history of the privilege or in the language," 384 U. S., at 526, and because I disagreed with the Court's "assessment of the [new] rule's consequences measured against community values," 384 U. S., at 537. I continue to believe that the decision in *Miranda* was an extravagant and unwise interpretation of the Fifth Amendment, and I would prefer that *Miranda* be abandoned, thus avoiding the reversal of this criminal conviction because of introduction at trial of statements by the defendants that were unquestionably voluntary by traditional standards but were made without the defendant having received the so-called *Miranda* warnings.

However, even were I to agree that *Miranda* was correctly decided, I would not join the unexplained extension which the Court gives *Miranda* in this case. At issue are two questions[1] asked of petitioner by an Internal Revenue agent in the course of a civil investiga-

[1] Petitioner was asked whether tax returns received by the Government bearing his name had in fact been prepared by him and whether he would consent to an extension of the statute of limitations for causes of action arising from those returns.

tion. The interview was indistinguishable from the thousands of inquiries into tax liability made annually as a necessary adjunct to operation of our tax system. The Court said in *Miranda* that "proper safeguards" were needed for "in-custody interrogation of persons suspected or accused of crime," 384 U. S., at 467. In this case the majority states that criminal investigation of Mathis began soon after the second of the visits to him of Revenue Agent Lawless. This suggests a view, unsupported by the record before us, that the civil investigation had raised suspicions of criminal conduct by Mathis at the time of this visit.[2] However, the majority also says that "tax investigations frequently lead to criminal prosecutions," a hint that any in-custody questioning by an employee of the Government must be preceded by warnings if it is within the immensely broad area of investigations which "frequently lead" to criminal inquiries. Fortunately, voluntary compliance with civil regulation is widespread in this country. Nevertheless, compliance must be supplemented and encouraged by constant and widespread investigations, during which questions are asked and data is requested by employees of the Government whose goal is only to settle fairly the civil accounts between the United States and its citizens. Sometimes, of course, the possibility of a criminal violation is discovered through such inquiries. I had not thought that *Miranda* extended its checklist of

[2] A civil investigator is required, whenever and as soon as he finds "definite indications of fraud or criminal potential," to refer a case to the Intelligence Division for investigation by a different agent who works regularly on criminal matters. In the case before us, such a reference was made eight days after the second visit to petitioner by Agent Lawless. The criminal agent visited petitioner, gave him the full set of "Miranda warnings," and was told petitioner did not wish to discuss the case with him. No further questions were asked.

warnings to these civil investigations. Certainly the explanation of the need for warnings given in the *Miranda* opinion does not cover civil investigations, and the Court's opinion in this case furnishes no additional support.

The Court is equally cavalier in concluding that petitioner was "in custody" in the sense in which that phrase was used in *Miranda*. The State of Florida was confining petitioner at the time he answered Agent Lawless' questions. But *Miranda* rested not on the mere fact of physical restriction but on a conclusion that coercion—pressure to answer questions—usually flows from a certain type of custody, police station interrogation of someone charged with or suspected of a crime. Although petitioner was confined, he was at the time of interrogation in familiar surroundings. Neither the record nor the Court suggests reasons why petitioner was "coerced" into answering Lawless' questions any more than is the citizen interviewed at home by a revenue agent or interviewed in a Revenue Service office to which citizens are requested to come for interviews. The rationale of *Miranda* has no relevance to inquiries conducted outside the allegedly hostile and forbidding atmosphere surrounding police station interrogation of a criminal suspect. The Court's willingness to reverse without explaining why the reasons given for the *Miranda* decision have any relevance to the facts of this case is deeply troubling.